

Digitized by the Internet Archive  
in 2022 with funding from  
University of Toronto

<https://archive.org/details/31761114670110>



















Lacking nos. R-1-15, 1984.



CA26N  
XC13  
-S78

R-16

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
ANNUAL REPORT, MINISTRY OF LABOUR, 1982-83  
THURSDAY, MAY 3, 1984





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
McNeil, R. K. (Elgin PC)  
Reed, J. A. (Halton-Burlington L)  
Riddell, J. K. (Huron-Middlesex L)  
Stokes, J. E. (Lake Nipigon NDP)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakubski, P. J. (Renfrew South PC)

Substitutions:

Hodgson, W. (York North PC) for Mr. McNeil  
Piché, R. L. (Cochrane North PC) for Mr. Watson  
Renwick, J. A. (Riverdale NDP) for Mr. Laughren  
Wildman, B. (Algoma NDP) for Mr. Stokes

Clerk pro tem: Mellor, L.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, May 3, 1984

The committee met at 8:19 p.m. in room 228.

ANNUAL REPORT, MINISTRY OF LABOUR, 1982-83

Mr. Chairman: I call the meeting to order. We have a reference from 20 members of the Legislature standing in their places.

Mr. Piché: Mr. Chairman, you say there were 20 members. Who were they?

Mr. Chairman: Do you want me to read them for the record?

Mr. Piché: Yes.

Mr. Chairman: It was recorded in Hansard. There were 20; I added them. I am a good adder.

Mr. Wildman: Twenty New Democrats.

Mr. Chairman: Twenty New Democrats.

Mr. Piché: Let the record show it.

Mr. Chairman: They were all here that day.

Mr. Wildman: Mr. Chairman, the reason I moved and other members supported the referral was our concern over the approach to enforcement of the Occupational Health and Safety Act by the occupational health and safety division of the Ministry of Labour. In particular, we were concerned about the recent Ontario Labour Relations Board decision that was handed down in February 1984, relating to a complaint from a worker at Westinghouse in Hamilton.

Our concern was that decision could lead to serious confusion among workers in this province with regard to their rights under the act and the approach to enforcement by the ministry. Conceivably, it could be interpreted from that decision that ministry inspectors have licence to intimidate workers who attempted to enforce their rights to a healthy and safe work place under the act and workers, or other citizens for that matter, who approach members of the provincial parliament with information about health and safety hazards in their work places and noncompliance with the regulations or nonenforcement of the legislation by the ministry.

In addition, the decision, which accepted evidence that a ministry official had warned a member of a joint health and safety committee against reporting his concerns to members of the Legislature, might impair the ability of elected members of the Legislature to carry out their responsibilities as representatives

of the people of this province. Workers of Ontario might be intimidated by government officials and not pursue their democratic rights.

Prior to moving the referral we requested that the Minister of Labour (Mr. Ramsay) make a statement affirming publicly that it was not the policy of the government of Ontario to intimidate employees into not exercising their democratic rights and informing their elected representatives of matters of concern to them. We also asked him to state publicly that he does not support the tactics that were employed by a ministry inspector in the Westinghouse case, that is, threatening a worker if he attempts to exercise his rights under the act or his rights as a citizen of the province, and to make a statement that intimidation and threats were not acceptable as an approach to enforcing the legislation.

We asked the minister to take steps to ensure the Occupational Health and Safety Act will be enforced to protect adequately the health and safety of workers and to ensure such legislation is strictly enforced by ministry officials. The minister indicated he was unwilling to make such a statement and I think that leads to even further confusion about the minister's approach and the approach of his ministry. For that reason we moved the referral.

We hope the committee will agree to hold hearings, not only with regard to the Westinghouse case and the evidence that was presented about difficulties in persuading the ministry to enforce the act adequately and difficulties workers had in carrying out their rights and responsibilities under the act, but also to look at other cases I am prepared to put forward to the committee for consideration; to call witnesses, both from the work force and from the ministry, to investigate this; to clarify ministry policy on intimidation by ministry inspectors; to establish, once and for all, the democratic rights of workers to use the political process to inform members of the Legislature of their concerns and grievances; and to have the ministry clarify its approach to enforcement and to ensure the legislation is strictly enforced in future by the ministry by looking at the approach to that responsibility over the last year.

It is for this reason the referral was moved. I have a proposal for witnesses whom we would like to have called. I am certainly open to suggestions from other members of the committee as to what approach the committee should use to carry out the consideration of this matter.

Mr. Chairman: Thank you, Mr. Wildman. I understand it has been referred to this committee, but we should have a motion to initiate something.

Mr. Wildman moves that the standing committee on resources development request the Minister of Labour to appear before the committee with whatever staff members he deems appropriate to consider the annual report of the ministry with regard specifically to the operations of the occupational health and safety branch, and that the committee be authorized to call



witnesses before the committee from the private sector to investigate the approach to enforcement of the Occupational Health and Safety Act by the ministry over the period in question.

That is a wide-ranging motion; I think it will cover everything. It covers the referral as it is typed up.

"Pursuant to standing order 33(b) we, the undersigned members of provincial parliament petition that the annual report of the Ministry of Labour be referred to the standing committee on resources development for the purpose of committee consideration of the ministry's approach to enforcement of the Occupational Health and Safety Act at Westinghouse in Hamilton."

This is the referral and the motion ties right in with it.

Mr. Wildman: I would hope the committee would consider the question of enforcement of the act over the period covered by the annual report; not just simply take the situation with the Westinghouse case, but determine whether or not this is a general problem or a specific one related to Westinghouse. We should be prepared to call witnesses from other sectors to determine if workers in other areas are experiencing similar problems.

Mr. Chairman: Any other speakers?

Mr. Lane: Mr. Chairman, it is my understanding that this matter regarding the Westinghouse situation is before the courts. This being the case, I do not see how we can discuss it in this committee at this time.

Mr. Wildman: I will comment on that. The referral deals with the annual report of the ministry, specifically as it relates to the enforcement of the Occupational Health and Safety Act. To my knowledge, the question of the enforcement of the Occupational Health and Safety Act is not itself subject to litigation before the courts. For that matter, I do not think there are any cases pending before the courts.

Would the member specify to what suit or case he is referring which would make it impossible for us to look at this matter?

8:30 p.m.

Mr. Lane: The referral does specifically say, "the Occupational Health and Safety Act at Westinghouse in Hamilton." It does specifically say that.

Mr. Wildman: That is right, but it is my understanding that even the operation of the Occupational Health and Safety Act at Westinghouse is not itself before the courts. I may be wrong on that.

Mr. Renwick: If I may speak to that, I think what my colleague has said is the first thing we have to know. I think Mr. Lane has raised the question of a matter before the court and he has not given any particulars as to what he is talking about. I

think he has to give particulars to the committee before he can just make a general statement that something is before the court.

Could we have particulars of the actual matter which Mr. Lane has raised which is before the court?

Mr. Lane: I understand that the member for Algoma (Mr. Wildman) was not satisfied with an answer he got from the minister in the House. He was not satisfied because the minister was not prepared to answer as the matter he was asked about was before the courts, and I think the same thing applies to this committee.

Mr. Renwick: I hope we do not get into a long drawn-out discussion about the red herring that has been raised by Mr. Lane before the committee. I do not think it is up to any member to just make an allegation that something is before the courts without being prepared in any way to tell us what is before the courts. Where does he get his information and what is it about?

It would be an unbelievable intrusion on the parliamentary process if a member of the House could say, "This matter is before the courts," and close off all discussion and debate on any matter in some general, nebulous world.

So my first very specific request to Mr. Lane in reference to this matter is for him to tell us what is before the courts.

Mr. Lane: The honourable minister knows very well what I am talking about and no further explanation is necessary.

Mr. Piché: Possibly what we should be doing right now is getting some legal opinion on the matter at hand.

Mr. Renwick: Mr. Chairman--

Mr. Piché: Just a minute, now, I did not interrupt you.

Mr. Chairman: Let Mr. Piché finish.

Mr. Piché: Before we deal with the matter that is in front of us right now we should get some legal opinion and come back so that you, as the chairman, can advise us. I do not think at this particular time we should go any further on the matter in front of this committee.

Mr. Renwick: Excuse me for interrupting Mr. Piché. I do so only out of exasperation at the very proposition that a member, without giving specifics of any kind whatsoever, can lead another member of the committee to say we are going to get a legal opinion. On what are you going to get a legal opinion? What are the particulars that are of concern to you?

If you have some case to make, you cannot knock a committee about by coming unprepared to deal with the matter in the committee when it is subject to a specific referral under the rules. If you are moving the adjournment of the committee because you are not prepared to deal with the matter, then we can deal with it that way and you will take the blame for the waste of the

time of the members of the committee and the time of the members of the House and the expense to the committee.

I am asking a very simple question: What are the particulars of whatever matter Mr. Lane has? I am not going to tolerate from members of the Tory party a sloppy, insubstantial and totally reckless intrusion on the parliamentary process.

Mr. Piché: Mr. Chairman, you know the respect I have for the member; I have an awful lot of respect for him. He has a legal background, and I am sure he knows what he is talking about. Unfortunately, some of us do not have the kind of legal background to--

Mr. Renwick: Mr. Chairman, on a point of order: I do not, under any circumstances, refer in any way to the background of my colleagues in any area to disparage them or to indicate that somehow or other they cannot cope. All I am saying is that we are all equal in this committee--

Mr. Piché: No.

Mr. Renwick: --and it has nothing to do with being a lawyer or anything else.

My point of order is that I want the member to withdraw the suggestion that I am both a member of the assembly and a lawyer and that somehow alters my capacity to present my position before the committee.

Mr. Chairman: Mr. Piché, Mr. Renwick has suggested that you should withdraw the remark about him being a lawyer.

Mr. Piché: I would gladly withdraw, because I have always said, and I mention it in this committee, the respect I have for the member. What I said--

Mr. Chairman: So you gladly withdraw--

Mr. Piché: No, I am not withdrawing at this time; but if he wants me to withdraw, I would be pleased to because of his suggestion. I will do that if I have to. He has a legal background; some of us do not and, because we are dealing with such an important matter here, we must get some advice about the legality in our own way, as Mr. Lane has brought up.

I think it is crucial and important and, if it continues, I would be more than pleased to ask that this committee adjourn until we get it, although I am not prepared to do it at this time.

Mr. Hodgson: Mr. Chairman, you have a motion before you and I think we should deal with it. If you would read the motion out, I think we should deal with it at this time.

Mr. Piché: The motion should be read again.

Mr. Wildman: Mr. Chairman, on a point of order: Do I understand that Mr. Hodgson is calling the question?



Mr. Chairman: I do not think so. You did not call for the question to be voted on, did you?

Mr. Hodgson: All I said was you have a motion before you moved by Mr. Wildman and I think that if there is a motion before this committee, it should be dealt with.

Mr. Piché: The motion should be read at this time.

Mr. Chairman: Would the clerk help us out, please?

Clerk of the Committee: Mr. Wildman moved that the standing committee on resources development request the Minister of Labour to appear before the committee, with staff, to consider the annual report of the Minister of Labour and the approach to enforce the Occupational Health and Safety Act at Westinghouse in Hamilton and other matters, and that the committee be authorized to call witnesses to aid in the investigation of the matter.

Mr. Piché: I think we should vote on it.

Mr. Chairman: I think we should have some discussion before we vote on it. If I can be helpful from the chair, as I understand it, the minister's concern in the House was an item that was before the courts that related to defamation against the Toronto Star and one of its reporters. That is what is before the courts, as I understand it.

Mr. Wildman: To clarify it, as I understand it, there is no matter of accusation of defamation against the Toronto Star or the Toronto Star reporter.

Mr. Chairman: The minister said in his statement in the House that there was. I have never checked into it, so I do not know. The minister said in the House that there was this action against the Toronto Star and one of its officials by Mr. Bergie, who is the ministry official you are referring to.

Mr. Piché: Is the procedure we should follow that we leave this in abeyance, see what the court does, then come back and deal with the matter, and then adjourn this committee right off the bat?

Mr. Chairman: Let me finish, please, Mr. Piché.

Mr. Piché: Take off "the bat."

Mr. Chairman: The minister did not want to answer the question in the House because of this pending action and because anything that was opened up either in the House or in committee could well affect the outcome of the action in the courts. That is why the minister sought outside legal advice, as he told you in the House, Mr. Wildman, before answering you in the way he did. I think it has to be the court action Mr. Lane has referred to.

Mr. Piché: Would Mr. Wildman agree that we should leave this in abeyance until such time as the court has dealt with it? I think you would be doing your colleagues here on this committee a service.

8:40 p.m.

Mr. Wildman: Mr. Chairman, I am particularly concerned about the confusion that has arisen out of the decision of the Ontario Labour Relations Board and the apparent unwillingness of the minister to clarify his position with regard to the policy of his ministry in enforcing the Occupational Health and Safety Act.

In my view, an investigation of that matter does not impinge on whatever action may be pending in the court. For that reason, I would like the committee to consider this matter, which I think is a matter of urgency for the workers of this province.

Mr. Villeneuve: Mr. Wildman, you may have a legal background; I do not know.

Mr. Wildman: No, I do not.

Mr. Villeneuve: I do not have a legal background either, but in my view, as members of this committee, we would be treading on very thin ice if we were to attempt to prejudge something that is before the courts at this time.

Mr. Wildman: In no way am I suggesting that to be the case.

Mr. Chairman: It is not so much a matter of prejudging as that publicity could affect the outcome of the decision.

Mr. Renwick: Mr. Chairman, I want to draw to the attention of the committee the report of the Ontario Law Reform Commission on witnesses before legislative committees, which deals with the kind of question that has been raised.

I take it the action we are talking about is an action commenced in the Supreme Court of Ontario between Thomas E. Armstrong and Lawrence J. Bergie, plaintiffs, and Torstar Corp., Toronto Star Newspapers Ltd., and John Devrell, defendants, issued out of the court on January 20, 1984, which appears to be an action with respect to libel or defamation.

The matter that is before the committee on the reference from the House and on the motion of my colleague touches upon the health and safety of many workers, both at Westinghouse and throughout Ontario. The concern that has been expressed by my colleague with reference to this matter is one of which each member of the assembly must be aware. The health and safety of innumerable individuals is affected in a very clear way by the pattern of practice and behaviour that takes place in the Ministry of Labour with respect to the Occupational Health and Safety Act.

I want you to weigh that in the balance against the question of whether two individuals believe themselves to have been libelled or defamed. One does not have to have a legal background. Everyone in this room is knowledgeable about what goes on in the world. You know as well as I do that an action for slander or libel in the courts is a matter that will go on indefinitely or for a long period of time. During that period of time, members of

the assembly, if you decide to use that action in the courts to prevent a discussion by this committee with respect to the health and safety of individual members of our community working in the plants of the province because of a pattern of behaviour and action that is growing up in the Ministry of Labour that needs to have the kind of attention from a committee of the Legislature to prevent a continuance of matters that affect health and safety, there is nothing affecting the health and safety of the plaintiffs in the lawsuit; there is a lot affecting the health and safety of working men and women in this province because of what has happened with respect to the enforcement of that act by the inspectors and others of the Ministry of Labour.

I am saying to this committee on behalf of my colleague and myself this evening that we are not interested in what Mr. Armstrong or Mr. Bergie has to say; we have no intention of calling Mr. Armstrong or Mr. Bergie to give any evidence of any kind before this committee. But there is a profound obligation on this committee in the public interest to consider how the Occupational Health and Safety Act in practice is enforced in the plants of this province under the two branches by which it is enforced: the inspectorate of the Ministry of Labour and the labour-management committees exercising the jurisdiction conferred on them under the act.

This question of sub judice has been used time and time again to prevent a committee of the Legislature dominated by the members of the government party from looking objectively and carefully at their responsibilities to the people of Ontario. They have no responsibility to Mr. Armstrong or Mr. Bergie; their responsibility is to the health and safety of the workers in the province.

This is not a matter that just comes up in some casual way; this matter comes up because of factual situations that have been the result of investigation by colleagues of theirs in this assembly with respect to the Occupational Health and Safety Act and matters that are related and highlighted in the decision of the Ontario Labour Relations Board with respect to the pattern of conduct of the Ministry of Labour in the way it enforces that act.

The Ontario Law Reform Commission, having had before it the question of the rights of witnesses before committees of the assembly, produced its report in 1981, because the matter basically was referred to the law reform commission by the Attorney General (Mr. McMurtry) on June 5, 1980.

The law reform commission, which on May 24 will be celebrating its 20th anniversary and which has been a guiding star with respect to the reform of the law of the province, has this to say. I am quoting from the report at page 76, and I bring it to the attention of the chairman and all members of the assembly who care to listen to it or to read it themselves before they come to some conclusion adverse to the working people of the province about this action.

Mr. Hodgson: We will read it ourselves. You have already been lecturing us for an hour.



Mr. Renwick: Well, you certainly are going to be lectured to for an hour if you come to this committee unprepared.

Mr. Lane: No, we are not. We are not going to be lectured. That is far enough.

Mr. Renwick: You came to this committee tonight not prepared in any way, shape or form.

Mr. Havrot: Neither are you, for that matter.

Mr. Renwick: You knew as well as I did that--

Interjections.

Mr. Chairman: Order.

Mr. Renwick: Mr. Chairman, I have the floor.

Mr. Chairman: Yes. If you are going to quote that, please do so, Mr. Renwick.

Mr. Lane: You are not going to talk all night, either.

Mr. Renwick: I am simply going to say that I think it is a disgrace to the committee for a member of this assembly to come before a committee of the assembly, utter two magic words--"sub judice"--come here not having studied the report of the law reform commission, not having studied the decisions of the House of Commons on this question or the decisions of our own House and put the case to the committee as to why it should happen.

I know of no procedure that allows a member who wants to block a proceeding of the committee to utter two words in Latin before this committee and not, in any way, shape or form, put the position as to why he thinks he is prohibited, as a member of the assembly, from dealing with this matter.

8:50 p.m.

I want to deal with this question about consulting lawyers. Each one in this room is a member of the assembly, and each one is responsible for the knowledge of the rules. It is not a question for lawyers; it is a question of how the business of this House is conducted under the rules of the House.

I know Mr. Hodgson is upset. He is always upset when it is a question of the Tories blocking a legitimate discussion in committee.

Mr. Lane: We are not blocking anything.

Mr. Renwick: The Tories are blocking it. They have raised the issue without giving either the name of the case or for one moment doing the courtesy to this committee and to their colleagues in the House of knowing what they were talking about.

They have this document available to them, just as I have,

and they knew they were coming here to block the proceedings of the committee this way. They do not have the courtesy to give us their reasons for saying so.

Mr. Lane: How can I talk when you are talking?

Mr. Renwick: I am going to read from the Ontario Law Reform Commission on--

Mr. Chairman: Please do so.

Mr. Havrot: He is out of order.

Mr. Chairman: I would like to hear this, so we can get on with the motion.

Mr. Lane: We do not need a lecture by him.

Mr. Havrot: We do not need a lecture in law.

Interjection.

Mr. Renwick: I am going to ask that the disparagement I am subjected to in this committee by someone referring to the fact that I am a lawyer be withdrawn by whoever makes it.

Mr. Hodgson: It has been withdrawn.

Mr. Chairman: Please read it so we are all familiar with it.

Mr. Renwick: In the context of the protection of working people in this province, will members listen to what the Law Reform Commission had to say:

"Having regard to the observations made in the preceding paragraphs, the commission recommends that the current general practice of hearing evidence in open session should be continued and encouraged. However, we wish to make two further recommendations, in respect of in camera proceedings, pertaining generally to the situation where it is known or anticipated that the evidence that will or might be given might tend to incriminate the witness, reflect prejudicially on the reputation, character or conduct of the witness or another party, involve a sensitive, privileged, confidential or classified matter, or where for any other reason the committee is of the view that the public interest would be better served by holding the hearing in camera than by holding it in public.

"The first recommendation is a general one. We recommend that on the application of a witness or on its own motion, a committee should be empowered to transfer proceedings from open to closed session in the type of situation just described. A witness should be permitted to justify his request for an in camera hearing in a closed session since, as the Australian report correctly noted, 'It may be difficult for a witness to make the application adequately in an open hearing without revealing the nature of the evidence and therefore the prejudice he will suffer.'

"The second recommendation concerns the situation where a legislative committee is dealing with a matter that is also the subject of a pending civil or criminal trial; in such a case, the committee may seek to call as witnesses all or some of the parties involved in the civil suit, or the accused, or other persons having some direct or indirect connection with the judicial proceedings. The commission recognizes that the publicity that may be generated by a public legislative committee hearing in this type of situation may well have a severely prejudicial effect on the parties to a civil action or on the accused in a criminal trial.

"As we have seen, witnesses before a legislative committee may be compelled to answer all questions and produce all documents insisted upon by the committee and the assembly. Wide media coverage of an investigative committee hearing that precedes or runs parallel to a civil suit or criminal trial may render it impossible for the parties to receive a fair hearing in the court.

"In determining what should be the status of legislative committee hearings on a matter that is sub judice, the commission has rejected the view that, under these circumstances, such hearings ought to be suspended until the conclusion of the pending civil or criminal proceedings."

I want to repeat that: "In determining what should be the status of legislative committee hearings on a matter that is sub judice, the commission has rejected the view that under these circumstances such hearings ought to be suspended until the conclusion of the pending civil or criminal proceedings."

To continue: "Leaving aside the argument that committee proceedings and judicial proceedings are not directed toward the same ends, the adoption of the view just described could severely impede the functioning of legislative committees. Committees could conceivably be hamstrung for years while the courts remain seized of important matters that ought to be considered by the legislative branch. In some instances the delay might well preclude any meaningful consideration of such matters by a committee.

"Having regard to these observations, the commission is of the view that a compromise ought to be effected. Accordingly, we recommend that where the proceedings of a legislative committee concern a matter that is also the subject of a pending civil or criminal trial, the proceedings should be held in camera unless the Legislative Assembly decides otherwise.

"The underlying presumption is then that where a matter is sub judice, a public hearing by a legislative committee is likely to prejudice the individuals involved in the civil or criminal trial. Consequently, we believe that in this situation the prima facie rule in public hearings should not prevail. However, in some instances the public interest would not be better served by an in camera committee hearing. The commission is of the view that here, as in other instances, undue rigidity ought to be avoided. We therefore would permit a public hearing where the assembly, as the

ultimate guardian of the public interest, deems it to be in that interest to hold such a hearing."

The Ontario Law Reform Commission is a highly respected body. The persons who sit on it are Derek Mendes da Costa, who is the chairman, the Honourable George Gale, the Honourable Richard Bell, the Honourable James C. McRuer, William R. Poole and Barrie A. Percival. Those are the members who made this report on this question.

It seems to me very clear that what it has said is that the public interest before a legislative committee, no matter how you state the question of civil or criminal proceedings before a court, has to consider the question, not whether it will suspend its hearings but whether in proceeding with its hearings--and I emphasize that--it should at any point in time, either by its own determination or on request of a particular witness before the committee, ask that the proceedings be held in camera.

I cannot conceive that anything is clearer than that matter. That, as I say, was in 1981. If I may, I want to refer--

Mr. Chairman: Mr. Renwick, that was the report of the Ontario Law Reform Commission to the House, was it not? Was it a recommendation to the House? Is that what it was?

Mr. Renwick: All matters before the law reform commission are on reference by the Attorney General. It was because of questions of concern to members of the assembly about the rights of witnesses before committees that this study was commissioned. This commission has made its report to the Attorney General. Copies have gone to every member of the assembly.

9 p.m.

It would ill behove the members of this committee, without the deepest and most reflective individual and collective consideration of that report, to use the sub judice rule to block the proceedings of the House on the reference which my colleague has put before this committee from the House.

In a matter before the--

Mr. Hodgson: Mr. Chairman, there is a vote in the House.

Interjection: Not for quite a while.

Mr. Havrot: Mr. Chairman, I move we adjourn until after the vote.

Mr. T. P. Reid: When is the vote?

Mr. Havrot: In a few minutes.

Mr. Wildman: They are not going to have the vote until the whips appear and one whip is saying not for quite a while.



Mr. Sweeney: If I could intervene for just a second, I have a suggestion. I do not know whether or not Mr. Wildman would be prepared to accept it or not, but it seems to me there are two issues at stake here. One is the specific reference to Westinghouse Canada, Inc., and the other is the overall policy question. On the latter, I get the impression from listening to both Mr. Wildman and Mr. Renwick it is of a much broader nature and, in effect, much more important.

If Mr. Wildman would be willing to delete the specific reference to Westinghouse from his motion, then it would seem to me that any concern about that particular case before the courts would be negated; we could deal with the policy question and just ignore the Westinghouse question. I do not know if Mr. Wildman is prepared to do that. That might be one way that we could go.

Mr. Wildman: I would be prepared to consider it, but--

Mr. Chairman: We have a while for that bell to ring apparently.

Mr. Villeneuve: Can the two be effectively divorced, one from the other?

Mr. Sweeney: My understanding is--and again someone can please correct me--is that the libel case refers specifically to an incident that took place at Westinghouse and does not deal--

Mr. Wildman: The reporting of that incident.

Mr. Sweeney: The reporting of that incident, yes, excuse me. It does not deal with the overall policy question of the ministry in its handling of occupational health and safety matters.

Mr. Wildman: That is my understanding.

Mr. Sweeney: I do not see that they are one and the same thing. It seems to me that we could quite safely deal with the broad policy question of the ministry, and not at all touch on the specific libel question of the Westinghouse case--as a matter of fact, it was the reporting of that question. Maybe we could just not mention it. I would suggest that is one way around it, if the mover of the motion and the committee were prepared to consider that.

Mr. Renwick: I should like to give my understanding of what the law reform commission has said on an issue such as this. I hold the rights of people before the courts in as high regard as anybody else in this committee, but I also hold the public interest that we serve on an equal status. My understanding is that there is absolutely no intention on our part to call Mr. Armstrong and Mr. Bergie, who are the plaintiffs in the law suit. Neither is it our intention to call any of the defendants. That is obvious.

There is a second point I want to make. Any witness coming before us to tell us about the practice of the Ministry of Labour in performing its inspection role and in its relationship to the labour management safety committees established under the Occupational Health and Safety Act can ask that his evidence be heard in camera.

In addition to that, the committee could of its own volition decide at any time that it would hear that evidence in camera. There certainly is no reason why the committee cannot, if it felt so advised, ask that we have legislative counsel present to advise the committee or the chairman, if he feels that the matter should be heard in camera.

I think it is a clear, fundamental and important principle that the committee should proceed on the reference from the House with whatever the appropriate language may be for the motion which has been put by my colleague the member from Algoma (Mr. Wildman).

I must say I always am concerned when I become professionally concerned and perhaps speak somewhat forcefully when other members of the assembly, under the guise that they are not lawyers, are not prepared to come to a committee to work out co-operatively the problems inherent in difficult situations placed before committees when there are matters in the courts. We have the guidance of the law reform commission, and it is most recent. I think we would be well advised to follow the guidance they have provided in their report and to work our way through an important reference so we can discharge our responsibilities.

Mr. Chairman: Mr. Renwick, can you or any other member of the committee help me? I would just like to get back to that report of the law reform commission for a moment. It was a report submitted to the Attorney General (Mr. McMurtry). It was referred, if memory serves me correctly, to the standing committee on procedural affairs and, consequently, it has never really been dealt with in the House. Am I right on that?

Mr. Renwick: It has certainly not come forward in any report of the standing committee on procedural affairs to the House. It has never been debated in the House because the last two reports of the procedural affairs committee have not yet been debated at all.

Mr. Chairman: So it was a recommendation.

Mr. Renwick: Other members of the committee can read just as well as I can. They can read what the Attorney General has said on this matter, what the law reform commission has said on this matter, what the reference by the Attorney General was about and what the problems are. You will see that the law reform commission does not come to that kind of conclusion without having given it very careful and serious consideration.

Mr. Chairman, I would ask you to request--no one can require anybody in the assembly to read a report of the law reform commission--that each member take the trouble to read the remarks

of the law reform commission that I have read before you tonight. Read what preceded it and read any other areas--and there are many other areas--that you feel are pertinent to it and try to see if we cannot discharge our fundamental responsibility to the public interest in a way that is consistent with the remarks of the law reform commission by holding hearings, where necessary, in camera, holding all of the hearings in camera or holding some of them in camera, so we can make whatever comments and report back to the assembly what recommendations we wish to make.

Mr. Chairman: I understand also that Mr. Gray, the employee of Westinghouse who has made the various complaints, has a further complaint before the Occupational Health and Safety Board.

Mr. Wildman: The Ontario Labour Relations Board.

Mr. Chairman: The Ontario Labour Relations Board. I am sorry. It is under the Occupational Health and Safety Act. That complaint is still before the board; it has not been dealt with by the board. Am I right on that?

Mr. Wildman: Mr. Chairman, I understand that this is indeed correct, but I further understand that his complaint relates not to ministry policy with regard to an enforcement of the act--I stand to be corrected on this, but I am certain this is correct--but rather with regard to the management's approach to health and safety in that plant. In my view, that is a different matter and, as I understand it, in the view of the Ontario Labour Relations Board also, it is a different matter, and that is why the two matters were separated.

Mr. Chairman: I do not know what the other complaint is.

Mr. Renwick: There is a matter before the board--

Mr. Wildman: There is a matter before the board.

Mr. Chairman: There is a matter before the board, yes.

Mr. Renwick: --which has not been dealt with by the board.

Mr. Chairman: That is correct.

9:10 p.m.

Mr. Renwick: We had in a very real sense the same kind of problem, as you will recall without going into it at any great length, in the matter of the Re-Mor inquiry in the assembly on the question of whether or not the proceedings of the assembly would affect criminal proceedings that were in the court. The resolution of the House was that the committee should proceed, and the committee did proceed. The reason was that they were involved in two different operations.

Our concern and the concern we are trying to bring before the committee to get sorted out is to ask appropriate witnesses



from the Ministry of Labour to appear before the committee to explain how the occupational health and safety system and the Occupational Health and Safety Act is implemented in the course of their work. Our concern is to make certain that we, and others who may be interested in doing it, have an opportunity of bringing before the committee the kinds of situations the members have perhaps run into in their own ridings with respect to the work of the inspectors of the Ministry of Labour.

I would hope this matter could be resolved along the lines recommended by the Ontario Law Reform Commission which, it seems to me, to be most appropriate and most adequate.

Mr. Lane: Mr. Chairman, based on legal advice that he had sought, the minister refused to answer the question in the House on the basis that it might prejudice the proceedings. I, as one member of this committee, will not debate the issue until that problem has been resolved. If you want to put the question--

Mr. Renwick: You would default on your public interest obligation then. Why do you not resign your seat and let someone else take it?

Mr. Lane: Why do you not resign yours? We did not need your lecture.

Mr. Renwick: I think it is unbelievable, Mr. Lane, that you would not consider the public interest.

Mr. Chairman: Mr. Wildman is--

Mr. Renwick: You come here totally unprepared and you take those categorical statements--

Mr. Chairman: Order, please.

Mr. Renwick: --that God has spoken and that precludes you from discussing any matter in a reasonable way.

Mr. Chairman: Order.

Mr. Lane: You accuse me of bringing in a red herring. You brought in the red herring. You have read to us for the last hour.

Mr. Chairman: Order, please. I have Mr. Wildman next.

Mr. Wildman: Mr. Chairman, I do not see how on earth the member for Algoma-Manitoulin could suggest that the opinion of the Ontario Law Reform Commission which has been brought before the committee by my colleague is a red herring. It is certainly very much apropos the issue.

Mr. Chairman: I thought you were going to help us resolve the issue.

Mr. Wildman: I would say, Mr. Chairman--



Mr. Hodgson: Mr. Chairman, I think the question should be put now.

Mr. Chairman: The question be put, did you say?

Mr. Hodgson: Yes, on the resolution presented by the member.

Mr. Chairman: I hate to cut off debate on the question too early. I know it has been asked but I think I have a certain amount of discretion.

Mr. Lane: We are not having a debate, we are having a lecture.

Mr. Chairman: I think I have a certain amount of discretion in accepting that motion if I feel there has not been sufficient discussion on the motion itself, but I have a problem accepting it.

Mr. Wildman: Mr. Chairman, again I want to emphasize that in no way are we particularly interested in the two individuals who have apparently filed suit with regard to the reporting of the Westinghouse matter in a newspaper in Toronto. What we are concerned about is the overall policy approach of the ministry towards the enforcement of the Occupational Health and Safety Act in this province and the confusion over that which has arisen over recent events.

I submit to the committee that the matter brought before the committee, the opinion of the Ontario Law Reform Commission which was cited by my colleague, is very apropos. The point is we can, as a legislative committee, decide to proceed despite the fact that a matter relating to the issue about which we are concerned may be before the courts. We can proceed and we can proceed in such a way as to ensure, as a committee, that we are not in any way impinging on an issue that may be before the courts, or that we are in any way prejudicing the matter or the individuals involved. We have the option of having in-camera hearings, if that is considered appropriate.

I do not want to go over this again, but I do think this is a matter of great urgency. We have had situations where workers in this province have had their health and safety impaired, where they have attempted to exercise their rights under the act and have been subject to reprisals and where they have felt the ministry is not taking the actions it should be taking in order to protect them and to protect their rights under the act. Those are matters that should be of great concern to members of the Legislative Assembly and should be considered by a legislative committee under what I believe is a very appropriate referral by 20 members of the Legislature.

I certainly hope that a statement citing that something is before the courts is not something that is all-inclusive and means that this matter can be postponed forever, or at least for such a long period of time that confusion will reign supreme for a good number of weeks and months and this matter of the policy of the

ministry towards the health and safety of workers in Ontario cannot be cleared up.

Mr. Havrot: Apart from the Westinghouse situation in Hamilton, would the honourable member be good enough to describe the other incidents? We have had no indication of any complaints, and we would like to hear them.

Mr. Wildman: I appreciate the suggestion by the member. I do not think he can argue there has been no indication of complaints. There have been many occupational health and safety matters raised by members of the Legislature with the Minister of Labour. I can certainly delineate concerns that were raised at firms such as Wilco, Dresser Industries, Rothsay Concentrates, MacKenzie Hall. I can elaborate on them, if you wish, Mr. Chairman.

Those are issues I think we should be considering in this Legislature and in this committee.

Mr. Chairman: I have heard nothing new introduced. I think I shall have to go back to Mr. Hodgson's motion that the previous question be now heard.

Mr. Renwick: Mr. Chairman, before you do, may I clarify the point you raised. I do not want to pretend my reading of this report precludes other people reading it, but you asked specifically how this matter got to the Attorney General (Mr. McMurtry). It is stated at the very beginning of chapter 1 of the report:

"On June 5, 1980, the Attorney General, the Honourable R. Roy McMurtry, QC, referred the subject of witnesses before legislative committees to the Ontario Law Reform Commission, and requested the commission to conduct a thorough review of the subject. The reference was a response to a specific recommendation made by the standing procedural affairs committee of the Ontario Legislative Assembly and contained in the committee's Report on Witnesses Before Committees."

There is a footnote to that as follows:

"Province of Ontario, Legislative Assembly, Standing Procedural Affairs Committee, Report on Witnesses Before Committees (Fourth Session, 31st Parliament, 29 Eliz. II, 1980), hereinafter referred to as the committee report. This report was not debated and remained on the order paper at the dissolution of the 31st Legislature.

"The committee report, which studied the 'privileges and protections for witnesses appearing before legislative committees,' was itself prompted by a reference from the Legislative Assembly charging the committee with this task." All the matters set out in here were in the hands of the law reform commission by action of the Legislative Assembly.

We have the benefit now of what the law reform commission has said, and I think it ill behooves this committee to ignore

those remarks by having the question put at this time. The members of the Conservative Party, in failing to understand or to even consider what the law reform commission has said at the request of the assembly on this issue, are going to block the reference that has been made by the House to this committee. That is what it is. It is simply stubborn, ill-conceived and misunderstood action by the Conservative Party--

### Interjections.

Mr. Renwick: Do not give me any of that nonsense. You know as well as I do when you came in here tonight, it would not have mattered if we had had the whole law reform commission here arguing for it. You were determined before you came in here that in the interests of the Tory party you were going to block this reference. You are doing it and you will do it.

The record will stand perfectly clear that, and it will be known to the working people of this province in every plant where they are operating at risk, that you, the Tory party, on instructions, refuse to consider--

Mr. Hodgson: You tried that before and it did not get you any place. You are still number three.

Mr. Renwick: --the reference to this committee under the rules of the House of the annual report of the Ministry of Labour.

Mr. Lane: I think it is unfair to consider it at all at this time because of the proceedings. I made that very clear.

Mr. Riddell: Mr. Chairman, I have not said much in this meeting. Would the Conservatives consider the resolution if the Westinghouse reference were deleted? I would be quite prepared to support the resolution if the Westinghouse reference were deleted, but I think even I am somewhat reluctant to support it if we are going to leave in the Westinghouse reference.

Mr. Villeneuve: Could we be fair to all the people involved if we were to leave out Westinghouse? We would be dealing in a very grey area, would we not?

Mr. Sweeney: They are two different issues. One is a libel issue, which does not really impinge upon the policy matter at all. We can deal with the policy issue of the ministry, pro or con, and not in any way touch on the libel question of Westinghouse. We could put them into separate compartments.

Mr. Villeneuve: They could easily be brought back together and made to show, from the evidence that would be heard here, that they could be intertwined. I would certainly like a legal opinion on it per se.

Mr. Sweeney: I do not think so, Noble.

Mr. Lane: The ministry already has a legal opinion.

Mr. Sweeney: I think it was because of the specific reference.

Mr. Lane: You are probably right.

Mr. Chairman: At the moment, Westinghouse is referred to in the motion. I have heard over here on a couple of occasions that the question be put. I feel we are not getting any further into the debate, and I must accept the motion that the question now be put.

The question before us then is Mr. Wildman's motion. If you want, I will read it; otherwise, you know what the motion is. Do you want it read?

Clerk of the Committee: Would you like me to read it?

Mr. Chairman: Yes, you read it. I cannot read your shorthand.

Clerk of the Committee: Mr. Wildman moves that the standing committee on resources development request the Minister of Labour to appear before the committee with staff to consider the annual report of the Ministry of Labour and the approach to enforcement of the Occupational Health and Safety Act at Westinghouse in Hamilton and other matters, and that the committee be authorized to call witnesses to aid in the investigation of the matter.

Mr. Chairman: Those in favour of the motion? Those opposed?

Motion negatived.

Mr. Wildman: Mr. Chairman, am I to understand then that the result of the defeat of that motion is that the matter is deferred until some later date when the majority on the committee would be prepared to bring it before the committee?

Clerk of the Committee: No.

Mr. Chairman: That motion is completely defeated, Mr. Wildman. I do not believe the referral--

Mr. Wildman: I am referring to the referral, not the motion. The referral is still before the committee.

Clerk of the Committee: No. The subject has been raised once.

Mr. Chairman: The subject has been brought before the committee and cannot be brought before it again, I do not think, in this session at all.

Mr. Wildman: So the import of the defeat of that motion is that the subject matter will not be dealt with, that the government members have defeated the attempt to discuss the policy



of the ministry with regard to the Occupational Health and Safety Act.

Mr. Chairman: That is correct. That has to be. Whether anything is being brought before the estimates--

Mr. Lane: Mr. Chairman, for the record, we defeated the motion that was before us.

Mr. Chairman: The meeting is now adjourned.

The committee adjourned at 9:24 p.m.



Lacking nos. R-17-29, 1984.





CA 26N

X 613

-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, JULY 16, 1984

Morning sitting

WILSON

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)

VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Havrot, E. M. (Timiskaming PC)

Lane, J. G. (Algoma-Manitoulin PC)

Laughren, F. (Nickel Belt NDP)

Lupusella, A. (Dovercourt NDP)

Mancini, R. (Essex South L)

McNeil, R. K. (Elgin PC)

Riddell, J. K. (Huron-Middlesex L)

Sweeney, J. (Kitchener-Wilmot L)

Watson, A. N. (Chatham-Kent PC)

Yakabuski, P. J. (Renfrew South PC)

Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Wrye, W. M. (Windsor-Sandwich L)

Clerk: Arnott, D.

From the Ministry of Labour:

Armstrong, T. E., Deputy Minister

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

Witness:

Griffith, W. D., William D. Griffith and Associates

Banks, M., Private Citizen

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, July 16, 1984

The committee met at 10:09 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT

Consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The committee members should take their places, please. If they would grab a seat, we could get our activities under way.

Welcome back to these fine hallowed walls. We have one item to deal with over the next three weeks, Bill 101. The clerk has scheduled a number of delegations. There are two this morning and two this afternoon. Tomorrow there is the Association of Injured Workers' Groups. A list is being passed out, so I will not enumerate them all. Phone calls are still coming in and more days and time slots will be filled before long.

To start, I would like to ask the Minister of Labour (Mr. Ramsay) whether he would like to make a few remarks and I would like to ask whether anybody else would like to make any opening remarks. Then we will get on with the delegations.

Hon. Mr. Ramsay: Mr. Chairman, I have some opening remarks that will take about 20 minutes at the outside, if that is satisfactory.

On June 12, when I introduced the amendments to the Workers' Compensation Act which are now under consideration by this committee, I briefly described the history of the review process leading up to the amendments in question and I explained why the government had decided to adopt a phased approach to reform.

In the course of the debate that followed on Bill 101 and on Bill 99, the companion legislation containing the 1984 adjustments in benefit levels, several members of the two opposition parties raised a number of concerns regarding particular provisions of Bill 101 or, alternatively, items they felt had been unjustifiably omitted from the legislation.

While I did attempt to address many of these concerns, either in debate or in my statement on second reading of Bill 101, I also undertook to deal with the various issues raised in more systematic fashion when I appeared before this committee.

Before I do so, and at the risk of traversing for a second time ground I may have covered in part in my statement of June 12, I think it is important to state again the government's reasons for deferring consideration of fundamental reform of the permanent disability pension system until a later date.

The decision not to proceed with some form of dual award scheme, incorporating the wage-loss concept advanced in the first Weiler report, was the subject of critical comment by some members during the debate in the Legislature. I might add that this criticism has, in general, not been reflected in comments I have received from the outside community. In fact, there has been broad support for the proposition that further consideration is necessary before the wage-loss concept can be accepted as the basis for redesigning the permanent disability pension system.

While I can appreciate the disappointment felt in some quarters at the prospect of further delay after a relatively long period of study on this issue, the reality is that whatever measure of consensus may once have existed on the desirability of a wage loss scheme of the type proposed in the 1981 white paper now appears to have dissolved.

The uncertainties attendant on devising an operational replacement for the present clinical disability rating scheme have induced a substantial reconsideration of previously held views among employer groups and worker organizations. While there may be a relatively widespread recognition of the deficiencies of the present system of establishing lifetime pensions, there is little common ground on the parameters of an acceptable and workable replacement scheme. As long as substantial questions surrounding the cost and administrative feasibility of a wage loss scheme remain unanswered, in my view it would be a mistake prematurely to abandon the current system.

In my remarks on June 12, I indicated that the wage loss concept would continue to be examined in the light of representations received and of developing experience in other jurisdictions. The government continues to attach a high degree of importance to the search for an alternative scheme that constitutes a financially sound and operationally effective improvement to the present system of compensating for permanent disability. In this respect, I await with some interest the submissions this committee will undoubtedly receive on the issue.

The decision to continue the search for a viable alternative to exclusive reliance on a clinical disability rating scale for determination of permanent disability pensions has resulted, in addition, in the deferral of a number of associated issues to the second phase of the reform process. The members for Kitchener-Wilmot (Mr. Sweeney) and for Nickel Belt (Mr. Laughren), among others, drew attention to the need for an improved vocational rehabilitation system, which might include the imposition of certain responsibilities on employers to rehire and, if necessary, retrain workers injured while in their employ.

I entirely agree that a fully functioning and flexible system for coping with the consequences of accidents and diseases occurring in the work place must focus attention beyond the provision of adequate levels of compensation benefits. By the same token, such measures should ideally be properly integrated with other aspects of the compensation scheme. In my view, this objective is best facilitated by developing the compensation and rehabilitative aspects of the program in concert with one another and not in piecemeal fashion.



Accordingly, improvements in vocational rehabilitation arrangements and measures to aid the re-entry of injured workers into the labour market, wherever possible, will certainly be considered within the context of the second-phase study mentioned above.

During the earlier debate on Bill 101, several speakers advocated the total abolition of the clinical disability rating schedule or, at the very least, a major overhaul of the present schedule and its method of application. Most of the suggested alternatives to the current system, including the particular wage-loss variant put forward in the white paper, still appear to retain a role, albeit a much-reduced one, for some kind of disability rating schedule. Obviously, this issue is a key element in the search for a new means of determining permanent pensions.

In the meantime, I offered the observation in my statement of June 19, and I repeat it here, that one of the other reform measures contained in Bill 101--namely, the reconstituted corporate board of the Workers' Compensation Board--presents the opportunity for more immediate review of the operation of the present clinical disability scheme as well as the means to make any desired revisions.

I should add that the improvements in Bill 101 relating to the supplement provisions of the act will go some way towards alleviating the position of at least some members of the group about whom concerns are most frequently expressed at present, that is, the recipients of partial disability pensions whose earning capacity is significantly impaired by their injury. This is also to a great extent, of course, a principal target group of the wage-loss scheme proposed by Professor Weiler.

While not intended to constitute the most appropriate permanent solution to the problem, the provisions for inflation adjustment of earnings, the special older worker supplement and removal of the bar against Canada pension plan disability pension recipients receiving a supplement under the act will provide immediate financial relief for at least some partial disability claimants.

The proposal to integrate CPP and WCB benefits for purposes of calculating survivors' benefits and rehabilitation supplements under the act clearly gave rise to some concerns on the part of the members during the debate on Bill 101. In part at least, I believe those concerns were founded on a misunderstanding of how the integration feature would be applied, although in saying this I hasten to point out that the objections that were registered also indicated some disagreement with the principle of integrating the two sources of benefit.

In my statement delivered on second reading of Bill 101, I explained in some detail why the integration feature was introduced and how the calculation of benefit entitlement would be made. This provision affects benefit calculations only where rehabilitation supplements or the new survivors' pensions are involved. Both have been substantially revised and improved in a

number of other respects with the ultimate aim of making the determination of benefit levels more sensitive to individual circumstances than was previously the case.

10:20 a.m.

Since receipt of CCP disability benefits is now regarded as a bar to receipt of a rehabilitation supplement from the WCB, the proposed integration feature will not result in any reduction in present benefits. In the case of survivors' benefits, the new scheme represents a substantial improvement over the existing one, so much so that in the vast majority of situations, there will remain a net improvement in total benefit, even after Canada pension plan is considered. It should be noted that integration of benefits will not apply to existing survivors' pension claimants, nor will it apply to permanent disability awards where no supplement is payable.

The calculation of workers' compensation benefit entitlement where CPP benefits are also payable will involve subtraction of the latter from pre-injury gross earnings as the initial step in the calculation procedure. Under a progressive income tax structure, this method produces a higher WCB benefit and, thus, is more advantageous to the claimant than would be a straight dollar-for-dollar offset of the two types of benefit.

Under the terms of Bill 101, those at present in receipt of a survivor's pension would remain on the current system, rather than converting to the new scheme. In fact, calculation of pensions under the new rules would arise only in respect of deaths occurring on or after the date of proclamation of the amendments. This consideration has led to the suggestion that an undesirable double standard will be created whereby benefits payable could differ significantly in cases where deaths occur on either side of the proclamation date, but where in all other respects, the circumstances of the cases, such as the spouse's age, the pre-accident earnings of the deceased and so on, are identical.

There is no doubt that significant differences in benefit levels can arise under Bill 101 for the reasons stated. While it could be argued that it is generally desirable to minimize or avoid threshold effects of this kind where possible, in practice they are not uncommon in comparable types of situations where pensions are being upgraded or the basis of calculation is significantly changed.

In this particular case, given the relatively complex nature of the proposed new survivors' package, there are a number of difficulties involved in providing existing claimants with a conversion option. As we proceed through the clause-by-clause explanation of the bill, I will be prepared to elaborate on those difficulties and I will listen with interest to any suggestions that may be put forward to cope with them.

Bill 101 provides for a substantial escalation in the covered earnings ceiling from \$26,800 to \$31,500, an increase of just over 17.5 per cent. The \$26,800 figure itself arose as a result of a five per cent increase effective at the beginning of

this month, under the terms of Bill 99. The level of \$31,500, which is approximately equivalent to 150 per cent of the average industrial wage, is below the levels advocated both in the white paper and in the standing committee report.

In earlier debates the members for Windsor-Sandwich (Mr. Wrye) and Nickel Belt (Mr. Laughren) spoke extensively and eloquently on the subject, suggesting that the ceiling should be raised to a much higher level or abolished completely. I admit it is a difficult issue and I indicated in my remarks during second reading of Bill 101 that significantly raising the ceiling is a relatively expensive measure which benefits only a small minority of claimants and it was the government's judgement that at this time extra expenditures were better directed towards many of the other amendments contained in the reform package.

In view of the phased nature of the government's reform proposals and the consequent need to determine priorities in the approach to amending the act, I confess I find it difficult to place a rise in the ceiling beyond \$31,500 ahead of a number of other measures which may be of benefit to those on somewhat lower incomes. The proposed new ceiling is not out of line with the ceilings in other provincial jurisdictions in Canada.

Another important issue referred to during the debate on Bills 99 and 101 relates to the question of the frequency and manner in which benefits paid under the act should be adjusted in future. Several speakers argued in favour of the notion that benefit levels should be formally indexed to either the consumer price index or the average industrial wage, to provide for automatic annual adjustments in benefits.

As I have indicated on past occasions when this issue was raised, the record over the past decade indicates that benefits have closely tracked movements in the consumer price index and have been amended regularly during this time with effect from July 1 each year, although applied on a retroactive basis in some cases. Nevertheless, I appreciate that whatever the outcome, the nature of the process by which increases are determined is such that it fails to provide an advance guarantee of maintenance of the real value of benefits.

I understand why the injured worker groups may wish to see such a guarantee, although I reject the suggestion advanced by some members during the course of the debate that injured workers have been forced to demonstrate in front of the Legislature to secure improvement in benefits.

On June 12, in response to a question by the member for York South (Mr. Rae), I stated that after careful consideration the government had decided the issue of periodic adjustments in benefits would be more appropriately addressed in the second phase of the reform process. This will ensure the related questions of how permanent disability pensions will initially be determined and how they will subsequently be adjusted can be dealt with together.

During second reading of Bill 101 on June 19, I indicated it was my intention to introduce an amendment to make provision for



French-language services at the Workers' Compensation Board. Work has proceeded on drafting the necessary legislative language and I hope to be in a position to make the proposed wording available to this committee very shortly. Incidentally, before I leave this issue, I would like to correct a mistaken impression the member for Dovercourt (Mr. Lupusella) appears to have gained from my June 19 remarks.

In stating my intention to move an amendment on this subject, at no time did I reject the possibility that other potential amendments be given full consideration at the appropriate time. While I have no other amendments in mind at present, I can assure the members of this committee I look forward to receiving the benefit of their views and those of the persons appearing before the committee as the hearings progress. I want to make it clear my stance on this matter is not an inflexible one, although naturally I believe the bill you now have before you represents the most appropriate direction for reform at present.

I would like to make one final point with regard to the proposed legislative package you have before you. Throughout the debate so far, relatively little reference has been made to questions of cost. In one sense this is quite understandable. Our primary task--and I am sure the opposition members would characterize their own objective in the same way--has been to develop and put forward a series of proposed reforms that adequately and fairly meet the needs of the injured workers of this province.

The thrust of this approach is to ensure that to the fullest extent possible the victims of work-place accidents and industrial disease, and their dependants, are justly treated and recompensed for the pain and suffering they have unfortunately undergone.

In striving for this objective, however, it would be unrealistic to act on the basis that the measures being proposed are in some sense without impact on other goals and objectives. I believe it is important at least to be aware of the nature, size and possible consequences of these impacts. To this end, the Ministry of Labour commissioned a cost impact study on the proposed reforms, conducted by the Wyatt Co. The report on that study was released on June 12, along with a related study on the unfunded liability of the schedule 1 accident fund.

The first of these reports estimated the cost of the government's proposals at \$86 million on one year's new claims, with an additional impact of \$190 million on the unfunded liability. Both figures include the costs of the five per cent benefit amendments implemented on July 1. These cost figures are not insubstantial and should be considered in the context of the overall financial position of the workers' compensation scheme. The second Wyatt report, in fact, indicates that employer assessment costs will likely need to rise quite significantly in the near future simply to meet existing obligations.

I draw the attention of the members of the committee to both documents simply to emphasize the fact that consideration of Bill 101's reform proposals cannot be undertaken in total isolation



from examination of their financial consequences. This is particularly the case at present when the costs of operating the existing program have been rising so dramatically.

10:30 a.m.

There is always a risk of being misunderstood when one talks of the cost of vital social programs. Not infrequently, the accusation is made that one is attempting to put a price on something, in this case the health and safety of workers, which cannot and should not be measured in money terms.

The hard facts are that we live in an increasingly competitive environment and one of our most urgent priorities is to maintain and enhance employment opportunities. In these circumstances, unpalatable as it sometimes may be, cost considerations ought not to be regarded as irrelevant in discussions of this kind.

It would be wrong in my view to characterize this bill, as some have sought to do, as either cosmetic or minor in nature. In fact, it represents the most significant package of substantive workers' compensation reforms to be placed before the Legislature since the original statute was introduced 70 years ago; nor, as I have made clear, is it intended to be the final word. Rather, it represents a substantial move, principally in the area of organizational structure and procedure, which in due course should permit the development of well-considered proposals for change in the design of the benefit structure.

The enhanced opportunities for external influence over and direct participation in the way the act is applied and administered, particularly through outside representation on the corporate board, will enable both labour and management to play a key advisory role in the further redesign of the benefit structure, including the disability pension system.

I look forward with interest to this committee's deliberations of Bill 101 over the next few weeks.

Those are the prepared remarks. I have one or two added items and they will take only a moment. One is to deal with attendance. I am hopeful of attending the majority of the committee hearings, but there will be occasions when I cannot, and my parliamentary assistant will be here.

One example would be tomorrow afternoon. I have a long-standing commitment to spend the entire afternoon discussing and studying the New Democratic Party task force on occupational health and occupational safety, and there is a large group of people, labour, management, NDP members, etc., who will be there.

Mr. Laughren: That is okay.

Hon. Mr. Ramsay: That one is all right, is it?

Mr. Chairman: You have never been one to offend the New Democratic Party.

Mr. Wrye: I do not know why you have to be absent for that.

Hon. Mr. Ramsay: Next week, I will be here Tuesday morning, but Tuesday afternoon I must leave for Halifax. I believe that meeting to be quite appropriate. It is a meeting of provincial ministers responsible for workers' compensation who are holding meetings Tuesday evening, Wednesday, Thursday and part of Friday morning on workers' compensation, so I do not feel guilty about being absent on that occasion. I think it will be a great benefit for me to discuss matters relative to the Workers' Compensation Board that are common to all provinces.

The only other point I wanted to make referred to a question that was asked of me by the member for Nickel Belt during the debate. I did answer him personally afterwards, but I think I should put it on the record. That was in respect to the commercial that is running on television with respect to asbestos, which was described, and I think accurately so, by the member for Nickel Belt as--was it "horrible" or something of that nature? I think the word he used was much more graphic than "horrible."

I have to say for the record that I totally agree. I think it is a horrible commercial, but I also think it is a very effective commercial. If it requires being horrible to be effective, I do not disagree with it.

Mr. Laughren: It is dishonest. That is what is wrong with it. It implies they did not know, and they did know.

Hon. Mr. Ramsay: As I said in our personal conversation, I am sorry that we are going to have to agree to disagree.

Mr. Laughren: It is a dishonest commercial.

Hon. Mr. Ramsay: I also want to make the point again that the commercial was approved for use by labour representatives. I do not have the authority to tell these people to pull that commercial. I certainly could have asked them and I am sure they would have been co-operative with me, but I felt the commercial should continue on the air. That is a judgement decision I had to make and did make. Therefore, as I say, we will just have to agree to disagree.

Mr. Lupusella: At least you can intervene and make sure the phraseology will be changed even though the picture will continue to be aired. My colleague the member for Nickel Belt is offended by the phraseology used while the commercial is on the air. Maybe you can intervene.

Hon. Mr. Ramsay: Mr. Chairman, that is a reasonable request. I will get the storyboards and have the copy here for you, and I will consult with the two of you to see if the change of a word or two might correct what you feel is a wrong impression. That is a reasonable request. Marge, could you follow up and get the actual copy from that commercial? We will do that at our earliest convenience.

Mr. Lupusella: Thank you.

Mr. Chairman: Mr. Wrye is visiting us today, due to the shortage of Liberal members.

Interjection: Now, now.

Mr. Wrye: Mr. Chairman, it is nice to be back here and to know I am going to be here for some time anyway. I wanted to make a few opening comments on behalf of my party as we begin this latest round of hearings into changes to the Workers' Compensation Act.

I will indicate at the outset that I am in substantial agreement with the views of the third party about that commercial, mostly because of the wording; I find some of the wording quite offensive. I appreciate the comments of the minister about getting the storyboard. I notice the minister still uses those words from back in his broadcasting days. I think with some changes we would have a better commercial, which would tell the story--

Hon. Mr. Ramsay: I have to make the observation that the broadcast industry seems to have flourished since you and I left it.

Mr. Wrye: Absolutely.

Mr. Laughren: On the other hand, the Ontario Legislature has not.

Mr. Wrye: I had not expected to be on this committee; I had expected to be in social development, but there was a change in our schedule. I note that my colleagues are a little late this morning. I hope they are not all running; maybe they are all holding press conferences. But I do want to make a few opening comments on the proposed changes to the Workers' Compensation Act.

I would agree with the minister at the outset that the proposed changes are probably unfairly called cosmetic or minor; I do not think they are only cosmetic and I do not think they are entirely minor; but it is this party's view that they fall a long way short, too far short, of reshaping workers' compensation in Ontario. That is, after all, the title of Paul Weiler's first study and, indeed, it is the mandate he was given, the mandate we were given about a year and a half ago when we as a committee first began to look into this whole matter.

The hearings went on for some period of time. I am trying to remember back, but it seems to me we had something in the range of 100 submissions. We had four weeks of very intensive discussion and study behind closed doors before we produced a report with which, as committee members know, our party was not entirely happy but which in my judgement was significantly better than what we have in front of us today in the form of Bill 101.

10:40 a.m.

I want to go very quickly over some of the major objections



we have. Not surprisingly, as committee members who sat through this process will know, our major objection is in the benefit package. We are obviously pleased with the change in the corporate board, the new appeals tribunal, the changes in the medical review process; all of those will be welcomed, I think, by all parties and by those who represent injured workers in this province.

Indeed, even the changes in representation for injured workers, as the minister knows, as inadequate as we feel they are, are nevertheless an improvement over the current system of workers' representation. We hope this committee will take another long, hard look during its study at whether we can go even further.

We on this side are very disappointed that the significant benefit changes and related changes to those benefits, particularly in vocational rehabilitation, have been left until what is being called the second phase of this process, a phase that has not been given any final timetable date. I find it most disturbing that we are looking somewhere into the future for very meaningful changes.

It is this party's view that the continued ad hoc amendments are simply wrong in terms of cost-of-living adjustments. They open us to the process of political tradeoff with both opposition parties trying to outbargain each other and with a government that invariably comes in with a proposal that is somewhat less than a full change to reflect changes in either the Canada pension plan or the average industrial wage, the latter of which was our proposal as the way to go. We find it very disappointing that they have not yet moved to take that matter out of the political arena.

The second area we will be attempting to make some changes in is the issue of temporary benefits. The minister has pointed out this morning that the adjustment in the maximum ceiling is now at 150 per cent of the average industrial wage, about \$31,500 as I remember it. I remind the committee members that the whole history of workers' compensation is the historical tradeoff between injured workers and their employers with the latter giving benefits in lieu of the right to sue and the right of tort action.

It seems wrong to me to describe putting on a ceiling as being somehow acceptable because only a small minority, 20 or 30 per cent, of injured workers fall above the ceiling. The fact is that 15, 20, 30, or even five or one per cent are not allowed the right to sue. Yet we have decided, in our wisdom, it is fair game, fair ball, that we will penalize those workers. I remind committee members and the minister that those workers who are very well-off financially--and they are well-off--have nevertheless worked hard throughout their lives to get to the point they are at on the day they are injured.

If you have workers earning \$40,000 or \$50,000 who want to maintain their lifestyle and pay their mortgage, car and whatever costs they incur, and this committee maintains the 150 per cent maximum in terms of the average industrial wage, it will be voting to cripple the financial future of a number of those people. I would almost have expected third party members to bring in this kind of a proposal. I do not mean to demean them, but they do not



recognize, as we in this party do, that we ought to be proud of people who have got ahead and made a great success.

This proposal almost seems to be socialistic in its intent. I find it rather surprising that it comes from the so-called free enterprisers of this province and that they would trade off the benefits of those who have succeeded so well in this life and in their success have provided great skill to the work places of Ontario.

I remind the committee again that we started with Paul Weiler's 250 per cent of the average industrial wage as a ceiling. Weiler made the point in bringing in that ceiling that he could not see any good reason for a ceiling at all. In spite of that, this committee voted as a majority, with the two opposition parties dissenting, to reduce that 250 per cent of average industrial wage to 175 per cent and phase in increases to bring it to 200 over five years.

Now we have the government in its wisdom rolling back things a little further. We are now at 150 per cent of the average industrial wage and the Lord only knows, if this committee meets much longer, where we will be. We might even be below the 125 we started with. My party believes that is wrong. We want to serve notice now that we will be bringing in appropriate amendments at the proper time.

I want to say how disappointed we are that, as this committee meets some five years after Paul Weiler was first charged with the task of reshaping workers' compensation, we sit here with a clinical disability rating system, the so-called meat chart, and apparently we have little idea of how we are going to solve that problem.

Our party, the third party and, indeed, the government proposed varying ideas and suggestions for getting us off this treadmill in terms of permanent pensions for injured workers. The government has not seen fit to do anything as yet. In a sense, we are back at square one in a disappointing way with no indication we are about to move off it. Not only have we failed to move from the clinical disability rating, which has consigned so many injured workers to a life of poverty or near poverty, but we have not made the other changes we might have made.

As the minister and the committee members know, after a very long struggle and debate we had come up with a definition in terms of re-employing workers as to what is suitable and available work. That appears nowhere in this legislation. Further, after long and sometimes acrimonious debate, we had reached a historic plateau as to a tradeoff and giving injured workers at least a limited right to return to their old jobs. That is missing.

We have done little if anything for those who are permanently injured and who may not be able to go back to their jobs or may have difficulty in going back to their jobs. What the minister points out today about real and meaningful changes in vocational rehabilitation and the efforts of vocational rehabilitation in retraining and re-employing injured workers is

very discouraging. I can imagine that there are thousands of injured workers who have waited a long time for this government and this Legislature to act. They have no reason to be encouraged.

I want to comment briefly on the existing levels of benefits for widows and children. As the minister knows, this is a pet peeve of mine. I think we have a double standard. I acknowledge the minister's comments that it would be difficult in terms of conversion of existing widows or widowers and children. I suggest the minister go back to the remarks I made in the Legislature at the time of the second reading debate and the questions I asked.

The solution is a simple one. It is to recognize that what you have done in this new act is to be applauded and that it is a great improvement in an area that cried out for improvement. The way to improve the life, lifestyle and existence of those widows and children who are unhappily unfortunate enough to face that situation is to increase the present levels of support by far more than the five per cent you increased it in June. That is the way to go and it is a simple way to go, failing any other comprehensive changes.

If you are not prepared to make comprehensive changes, I do not think you should stand back and suggest there is no easy solution, because there is one. It is to increase the standard by more than the five per cent. The numbers were obviously very clear to you or you would not have brought in the changes that are probably the best part of the act in terms of benefits.

10:50 a.m.

I note the minister's comments about the Canada pension plan and removing the bar to rehabilitation and to supplements for those who are in receipt of CPP. Obviously, we on this side applaud that change. It is one that is long overdue. I hope in the Canada pension plan integration that has begun we are not beginning down the long road of integrating CPP benefits and WCB benefits. We in this party oppose it in principle. We opposed it when the committee met earlier, as the members of the committee who have been here through these long months and years know. We will continue to oppose it.

In sum, we start out with these hearings, hoping the minister will have an open mind and that it will be possible, if not to get all we wish, to get at least some of what we wish. We understand, on this side, the increase in costs. We understand it is a burden that is increasingly difficult for the employers of this province. We have no desire to have one individual or one company go out of business because of the level of WCB benefits.

In terms of costs, it seems that this government has failed utterly to deal with that matter by saving money through proper vocational rehabilitation and giving workers rights to their jobs back. That is the way to start. The way down the road to continue, enhance and advance the process is to reduce the number of accidents in this province.

We can talk about costs today, tomorrow, for the next month and for the next year. We can talk about costs until we are blue in the face. There is only one way to cut the costs of workers' compensation in this province, and that is to make the work places of this province, each and every one of them, safe. That is what you are charged to do under the Occupational Health and Safety Act. It seems to me that is the act you should be using. Let us get on with the job.

If the employers of this province do not like the cost of workers' compensation, then it is up to each and every one of them, working with each other, pressuring each other to end a system where there are far too many employers running unsafe work places. You know the record better than I do and the record is very spotty.

We have some exceedingly good work places and we have some exceedingly bad ones. The bad ones are the ones that are running up the cost of workers' compensation in this province. If you want to turn that system around, then employers working together, pressuring each other, discussing safety regulations with each other can do it and government can do it as well through a very activist approach under the act.

With those few comments, we look forward to hearing the many witnesses who will come before us. We hope they will have an effect on the government. If not in all areas, we hope the government will see its way to bring forward some amendments. If not, of course, we will be proposing amendments of our own.

Hon. Mr. Ramsay: In response to the last statement made by Mr. Wrye, I indicated in the Legislature that I would provide to this committee a table from a report on occupational health and safety that was recently done for the Metropolitan Toronto District Health Council. It was one that hit me between the eyes, so to speak, because I did not realize the figures that were being presented to me. It was on a slide and I asked for a hard copy. I will give this to Mr. Wrye and a copy to the others as well.

It uses 1979 figures, mind you, although it also shows 1982 figures for Ontario in comparison with the United States. This is a comparison of Ontario and the United States occupational injury rates per 100 employees.

In manufacturing in Ontario in 1979, it was 7.5; by 1982 it had dropped to seven. Let us just use the 1979 as comparison because that is the year for the American figures. The figure in the United States was 12.8. In construction, in Ontario it was 10.8; in the United States, 16. In transportation and communications, the United States did better than we did; we had 12.8 and they had 9.9. In wholesale and retail trade, we were at 3.8, the United States, 8.7. In the service industries, we were at 2.3 and the United States was at 5.3.

I think these figures are illustrative of the fact that Ontario is doing something, is leading the way.

Mr. Laughren: What about mining?



Hon. Mr. Ramsay: Mining is not on here. No, it is not. The Metropolitan Toronto figures are on here, which are better than the provincial figures. I will ask the clerk to distribute this for you. This was an independent study that was done, commissioned by the Metropolitan Toronto District Health Council.

Mr. Chairman: We will get the clerk to distribute it.

Mr. Laughren: Mr. Chairman, I have a funny feeling that every time the discussion comes around to Canada pension benefits that by the time we finish making amendments to the Workers' Compensation Act and restructuring it, we will all be in receipt of Canada pension benefits, probably disability ones.

The improvements are a mixed bag. There are some good things in the act, and I think that should be stated. Some of the things we like are the fact that the workers are no longer compelled to see doctors of the board's choosing and that, vis-à-vis survivors, the whole question of remarriage or common-law relationships is not a factor. You have even removed the reference to "common prostitute" in the act. Domestics are now included, and this is a positive step. The panel of medical practitioners is a step forward. As well, giving an injured worker wages from the day of the injury is an improvement. The biggest improvement of all, though, is in the survivors' benefits.

I would like to spend a moment on this because it is the biggest improvement and yet in a funny way it is the biggest disappointment too. That may sound contradictory, but what really drove it home to me--and I do not want to use an unfair analogy--was that the very time we were debating these amendments in the Legislature was when four miners were killed in Sudbury. It went through my mind very vividly how those survivors would get a totally different level of benefits from those that survivors would get after this act is passed. I thought the member for Windsor-Sandwich (Mr. Wrye) was quite right when he said there are problems in making anything retroactive but there are ways you can look after that by increasing their level of benefits.

We did some arithmetic on the kinds of differences there would be, and I do not know how you justify this or how you live with it. I will give you a couple of examples, which may be a little hard to follow; you may want to read them in the printed form later. We used a couple of situations where there is a surviving spouse and no children and we set an arbitrary income for the person who was killed.

In the present situation a surviving spouse with no children, regardless of age, gets a lump sum of \$1,500, a pension of \$593 a month--which is \$7,116 a year--and burial expenses of up to \$1,500. Under the new system, because there is an age factor, you have to build in an age. If there is a surviving spouse with no children, if the pre-accident earnings of the worker were \$20,000 and if the spouse is 25, that person gets a lump sum of \$40,000 plus \$15,000, which is \$55,000. The \$15,000, by the way, is the \$40,000 plus \$1,000 per year from 40 down to 25. That is a \$55,000 lump sum settlement.



After that, if it is a woman, she would get a pension of 40 per cent of the net average earnings less the 15 per cent age factor, which is equal to 25 per cent of net, which comes to \$3,900 a year. So that person would get a \$55,000 lump sum plus \$3,900 a year, according to our arithmetic, compared to the current system, in which she would get the \$1,500 lump sum and \$7,100 a year.

If you move up to a spouse who is age 40, that person would get a lump sum of \$40,000, which is the standard, and would also get a pension of 40 per cent of net average earnings, or \$6,255 a year.

If the surviving spouse is 55, he or she would get a lump sum of \$40,000 minus \$15,000 because of the age factor, so that person would get \$25,000 plus a pension of 40 per cent of net average earnings, plus the age factor of 15 per cent, which would bring it out to \$8,600 a year.

11 a.m.

Those figures probably do not mean much until you put them down in a chart form and compare them, but they show the differences that exist out there on age. It really bothers me that the legislation would be so arbitrary on age. It makes such sweeping generalizations about the need for income support of spouses, completely because of their age, when we all know there are older families with many obligations, children going to school and so forth, and there are younger families the same way. I find it very difficult to accept that age difference. You really do, whether you want to admit it or not, end up with two classes of dependants.

That is why I say the survivors' benefits improvements--and they are improvements--have an offsetting factor that is very disturbing. I really think the minister should take a look at improving the lot of the existing survivors.

One of the other things that bother us is, of course, the ceiling. The government members and Ministers of Labour through the years have never been able to explain--as a matter of fact, most of them do not try--how you justify a ceiling; how, in a system that supposedly endorses the work ethic, someone should be financially penalized because he gets hurt endorsing that ethic. Something that has always puzzled me is how you come to grips with that in your own mind, other than to say it is too expensive and that it only involves a few people.

What you are really doing is asking one group of workers to subsidize another. You are asking the injured workers who earn high incomes, such as bonus miners or certain construction workers, to subsidize others when you impose that ceiling. It is the same principle as going from 75 per cent of gross to 90 per cent of net. Some workers are going to be subsidizing others by that change.

What bothers me is that I do not think that one group of injured workers should ever be asked to subsidize another group of injured workers. That is a flawed principle. It is a mean-spirited principle. It is not appropriate that we should be passing legislation such as that in the province. I really wish that some day the government would come out with a definitive rationalization for that kind of policy where one group of injured workers is asked to subsidize another when you make a change in the act. You do that with the arbitrary ceiling and you do it with going from 75 per cent of gross to 90 per cent of net.

Another problem, of course, is the long-standing problem of refusing to index benefits.

Further, there is still no basic right of an injured worker to a job. That still is not in the act. Once again, it is part of that work ethic question, which this government talks about rhetorically but does not really seem to deliver on when it comes to injured workers. That is one reason I have always felt that while it is not fashionable to talk about a class system in Ontario, anybody who thinks there is not one need only look at workers' compensation and see who pays the price of workers' compensation.

You can talk about the employers paying it if you like, but you and I both know it is the injured worker who pays the price for injuries on the job. When you look at who gets injured in Ontario or other places, it is not people in the executive suites who get injured. It is people out there underground and on construction sites and so forth. That is why I have always felt very strongly about workers' compensation and felt angry because it is so blatantly anti-working class legislation.

The government has always failed to recognize that, to accept that fact. The former minister, Mr. Elgie, used to get very angry when I said that. I understand that if you are part of the establishment in Ontario you do not like to accept the fact that it is a class system out there. I feel that while you have made some improvements in this legislation, you really have not got at the underlying problem, namely, that it is an adversarial system and that the cards are stacked in that system.

We, of course, would like very much to move to a nonadversarial system whereby people are compensated regardless of fault and regardless of where the injury occurs. It would have to be actuarially sound and, as a matter of fact, I suggest to you a public system like that could not possibly screw up its unfunded liability the way the Workers' Compensation Board has.

I wish the minister were a little more honest when he talks about the costs of the system and about assessments against employers. We know, having seen the numbers, the reason the WCB is in trouble with its unfunded liability is that it did not increase assessments while benefits were going up in recent years. We know that. The numbers are there for everyone to see.

You never talk about that. You never say employers had a very good cheap form of insurance for a number of years while they

were raising benefits to injured workers. How silly can you get? I cannot imagine a public sector program being so silly. This is a private sector program and that is what they have done.

I do not know who they blame. They want to blame the workers. It is always easy to blame the victims in these situations and that is what they are doing. It was the fault of the board and the board's actuaries that the assessments were not raised when they should have been. They actually went down one or two years, I believe, while costs were going up. You do not have to be an actuary to know that is pretty wrong-headed.

You will excuse me if I do not shed tears when the minister talks about the costs of the system and about things like unfunded liability. You made your own bed and you can lie in it. Sure, there are going to have to be increases in assessments, but I do not see that as the fault of the injured workers in Ontario. One does not like to think this way, but perhaps these increases in assessments will bring about more safety-consciousness on the part of employers.

Hon. Mr. Ramsay: With respect, Mr. Laughren, please find in the record where I blamed that on the injured workers. I would like to read that.

Mr. Laughren: Very simply, in your opening statement you talk about the cost of the system. Let me find it. I do not want to misquote the minister. You say on page 18:

"I draw the attention of the members of the committee to both documents simply to emphasize the fact that consideration of Bill 101's reform proposals cannot be undertaken in total isolation from examination of their financial consequences. This is particularly the case at present, when the costs of operating the existing program have been rising so dramatically."

The costs have been rising dramatically in the last couple of years because, for the previous years, you were not keeping up with them. You make the point that you do not want to remove the ceiling because it is too expensive; you have often said that. That is why you have a ceiling and why you will not cover existing survivors in an appropriate way. I do not think there is any question about that.

My point is, while you say that in one breath, you do not admit in the next breath that the fault is that of the WCB because it did not keep its assessments going in lock-step with benefit increases in the last 10 or 15 years. We know that. We have seen the figures in the previous hearings and we believe you are asking the wrong people to pay the price for that. I understand where you are coming from but I do not like it.

Mr. Chairman: Those two weeks off did not do you any good at all.

11:10 a.m.

Mr. Laughren: Any time I deal with workers' compensation legislation, it all comes back to me what kind of Ontario we have



and who the great prosperous Ontario is really for; it is not for injured workers, among others.

We will try to make some amendments. I understand we will be doing that later, not during the couple of weeks we will be dealing with the hearings. As long as I have my friend and colleague the member for Dovercourt (Mr. Lupusella) here, I shall feel completely confident that any amendments we move will be in the best interests of injured workers. Otherwise, I would no longer remain his friend.

I will conclude my remarks at that point.

Mr. Chairman: We will proceed with our first delegation.

Mr. Lupusella: Mr. Chairman, I would like to say a few words, if I may. This will not be an opening statement, but it is in relation to--

Mr. Chairman: All right, but we have two delegations here this morning.

Mr. Lupusella: The reason I would like to get involved is that I would like to make a few remarks to the minister which I hope will be considered in the context of the proceedings that will take place in July and September.

I would like to congratulate the minister--I rarely do that--in relation to having an open mind about improving the present Bill 101. I got the impression in the past from the minister moving the amendment on French services and so on that it would be the only amendment to Bill 101. I made reference in the Legislature to the fact that I would not be at these hearings, but my colleague the member for Nickel Belt (Mr. Laughren) told me I should sit because I had the wrong impression, and you clarified your position in your opening statement this morning.

One thing I would like to bring to your attention--this concern has been expressed by the Liberal critic and by my colleague--is in reference to survivors' spouses. In past debates I made particular reference to fatal cases, a scenario that was never covered in the past. As you stated, we are entrenching a sense of reshaping the Workers' Compensation Board after 70 years. We have to recognize that a lot of people suffered from the injustices of the system.

One thing we have to be generous about as to money and the content of the legislation is in relation to fatal cases and survivors' spouses. In particular, I would like the minister to take note of people who have no dependants, who are not married and who are living with their families. If they reach a mature age such as 20 or 21 years old and, as a result of an accident, they die, the only benefit they get is burial expenses of \$1,500; their parents do not receive any money.

We are not faced with many cases such as that. I do not have the number. However, there is a family in my riding that had a 17-year-old son living with them. He was not considered by the



board to be a dependant of his parents, and the only money the father got 10 years ago was \$700 for burial expenses. That is wrong. The family spent money to raise the child when he was living with them and the fact he was not married--the life of a person should not cost \$700 for burial expenses and nothing else. As I stated, we are not faced with too many cases like that, but I think the board can give us the figures to cover this great loophole of injustice that affects a lot of families in Ontario.

I would also like to refer to the Canada pension plan. The minister in his opening statement made the reference that there will be a phase 2 for reshaping the Workers' Compensation Board. I think it is natural that until we see the full content of the package, we defer the issue of CPP until phase 2. We should delete the clause on CPP from Bill 101 and reconsider that clause in phase 2 when we have an opportunity to review the contents of the full package of benefits. I hope my recommendation makes sense.

The minister is aware that this particular clause is opposed not only by injured workers across Ontario but also by Liberal and New Democratic Party members. Until we are able to study the full package of phase 2 for reshaping the WCB, it makes sense to delete this clause.

My final concern is the clinical rating system. You have heard in the Legislature how critical I have been through the years in relation to this clause. I know you are looking, as you stated on page 4 of your opening statement, "to continue the search for a viable alternative to exclusive reliance on a clinical disability rating scale for determination of permanent disability pensions."

I think a solution to this issue is overdue. We have heard from previous ministers that this situation has been under study since 1975, when I became a member of the Legislature. I do not think the situation can continue to be tolerated and deferred for future study. We should find different viable alternatives to the clinical disability rating scale.

We also know the majority of injured workers demonstrating in front of Queen's Park are particularly concerned about the clinical disability rating system because the amount of money they receive is affected on the basis of that. In other words, the percentage of clinical disability rating system is directly proportional to the amount of money they will receive. The more the percentage increase, the more money they will get. The less the disability they receive from the board, the less money they will receive.

I do not think the board should have discretionary power to establish the degree of disability and to play with figures when the amount of dollars the injured worker will be receiving is based only on the clinical disability rating system. It should have priority.

This system has been in full operation since the establishment of the Workers' Compensation Act, even though they have only increased the percentage of the clinical rating system

twice or three times--I do not know--in 70 years. The whole concept is wrong, and I hope the minister will eventually give us an opportunity in Bill 101 to make reference to a clinical disability rating system for all injured workers, not only for the new ones.

11:20 a.m.

The minister made reference to unfunded liability. I would like to remind you that when you introduce packages of amendments you take into consideration the cost; my colleague the member for Nickel Belt (Mr. Laughren) made the particular reference that the board was wrong in the past in assessing the premium for employers across Ontario.

With respect to all the money that is invested by the board, I think we have to take a look at two things. Is the board looking for investments and making profits from money it is receiving from employers, or is it supposed to cover the yearly cost with money that comes from the employers? I think the board has enough money invested that it can liquidate some of this money to put an end to the injustices of the past.

Mr. Chairman: Mr. Lupusella, I am glad you did not ask for 10 minutes. We would have been here all night.

Mr. Wrye: When do we get an opening statement from John Williams?

Mr. Chairman: I do not believe Mr. Williams is on the committee at this time. I know members are going to miss his sound advice and conscientious--

Mr. Riddell: You have made my day. I drove in for two and a half hours this morning dreading the thought.

Mr. Chairman: We will now proceed with the first delegation, William D. Griffith and Associates. This is exhibit 10 in the package of material you received this morning.

Before Mr. Griffith begins, I would like to ask members to consider and digest the one handout we had from the clerk regarding travel to different points during our committee hearings. I think we should discuss this later on this afternoon after the two delegations are completed so we can get our arrangements made concerning whether we are going to travel and, if so, where. That paper was handed out to you today, and it is entitled Committee Travel.

#### WILLIAM D. GRIFFITH AND ASSOCIATES

Mr. Griffith: Good morning, Mr. Chairman, Minister and ladies and gentlemen of the committee.

Mr. Chairman: You will notice you were due to be on at 10:30; we are somewhat past that. However, we would like to take as much time as we possibly can, bearing in mind that we--

Mr. Griffith: --dealing with workers' compensation.

Mr. Chairman: Right. We do have another delegation following you, so we do not want to be too restrictive in the time, although I know members of the committee will no doubt have questions of you when your presentation is concluded.

Mr. Griffith: I thought I would do what I did last time and just skim through my brief, then leave some time at the end for questions.

Like my friends over here, I have had some problems with Bill 101 myself, beginning with the clause 1(8)(z) definition of "worker."

Under the new proposed act, an executive officer of a corporation is not to be considered a worker. I do not agree with this, because I feel there are many business operations, particularly those of a smaller nature, in which the executive officers are involved in and exposed to the same working conditions, and thus the same dangers, as the nonexecutive workers.

I ask how it could then be reconciled that, given two industrial accidents of a similar nature, the nonexecutive worker would be entitled to benefits under the act but the executive officer would not.

Subsection 1(2) of the act as set forth in subsection 1(9) of the bill deals with the calculation of earnings for a person who assists in firefighting, search and rescue and other emergency operations. It states, "the earnings of the person shall be the earnings in the person's regular employment calculated in accordance with this act."

I would recommend that in the application of the section the board seek the guidance of subsection 45(2) of the current act or subsection 43(2) of the new act, which says, "regard may be had to the average earnings that during the 12 months prior to the accident was being earned by a person in the same grade employed at the same work by the same employer."

In other words, in the calculation of these benefits, if it turns out that the rescuer's regular employment earnings are lower than, for example, those of a firefighter in the same firefighting operation, then the calculation should be made at the higher level so the benefits would reflect a higher level.

Subsection 3(4) states, "Where an injury is attributable solely to the serious and wilful misconduct of the worker, no benefits or compensation are payable unless the injury results in death or serious disability." Again I refer to recommendation 8 from my previous brief, that "serious disability" should be clearly defined in the act; for example, a disability causing six weeks or more of lost time.

Sections 5 to 7 of Bill 101 deal with extending civil liability exemption to executive officers of employers with



respect to industrial accidents. I do not agree with this. Instead, I accept the wisdom that was expounded by the Supreme Court of Ontario in the case of Beryl Bernice Berger v. Willowdale AMC et al., which outlines principles and concepts to take into account the liability of executive officers of corporations.

I do not feel the new legislation should in any way restrict or diminish the responsibility of employers or executive officers of employers to create and maintain safe and accident-free work places and working conditions.

There is no argument from any member of this committee that there are far too many occupational accidents occurring in Ontario every year. As was stated earlier, if employers, especially executive officers, are sincerely concerned about their Workers' Compensation Board costs and assessment rates, they should do everything within their power to create safer work places and maintain safer working conditions to alleviate or abolish the number of accidents within their industries. I would go even further and hold these employers accountable to not only civil liability but also criminal liability as outlined under the Canadian Criminal Code.

Section 36 deals with survivors' benefits. A lot of discussion has already taken place here today on that. I was pleased to see that Bill 101 extended entitlement for rehabilitation services to surviving spouses, but I have to go back to recommendation 10 from my previous brief. All surviving spouses should be entitled to 100 per cent of the workers' net disposable earnings. Further, in the cases where there is no spouse, or the spouse dies but there remain dependant children and/or other dependants, these calculations be 100 per cent of net disposable earnings as well. I reason that when a worker has died in an occupational accident I really cannot see why his or her survivors and dependants should suffer any further through financial hardship.

Under various sections of Bill 101 the board is allowed to take into account Canada pension plan benefits for the purposes of calculating survivor temporary, partial and permanent disability WCB benefits. Again, a lot of discussion has taken place here already. Although I feel that these provisions may not be unconstitutional, they certainly are abhorrent. The CPP and the WCB are two separate and independent agencies for income maintenance with separate jurisdictions and separate criteria for the eligibility of benefits.

My friend over here talked about the great historic tradeoff whereby employers were compelled to pay into the WCB scheme while employees lost their right to sue. I reason that if the WCB did not exist and workers did have to sue their employers, no court in the country would stop to take into account the fact that the worker may be in receipt of CPP benefits in determining the award to that worker; therefore, why should the board? The arguments about stacking of benefits leading to "overcompensation" are paternalistic and really without merit. How could you possibly overcompensate a worker for the loss of his or her arms, hands or eyes?



11:30 a.m.

Section 41 deals with the earnings ceiling. As discussed today, the proposed ceiling of \$31,500 is a departure from the recommendations of the Weiler report and the white paper. In its December 1983 report, the majority of this committee was swayed by the arguments put forward by the Canadian Manufacturers Association in its brief of May 4, 1983, that to leap from the present ceiling to a new one of more than \$50,000 is not only a dramatic one-step increase but could also be a financial blow which some companies could not survive.

Despite this, I am not convinced. I agree with what has been stated before, that is Professor Weiler's belief that there is no reason for a ceiling at all, that the WCB benefits should reflect the real and actual wage loss suffered by an injured worker for the duration of his or her disability and, further, that the WCB benefits should be calculated on the basis of 100 per cent of pre-injury net earnings.

Again, I state that if employers are truly worried about their WCB rates and assessments, they should make it their ultimate responsibility to ensure that their work places and working conditions are safe and accident-free.

Subsection 56(2) states, "The chairman of the appeals tribunal shall be a member ex officio of the board of directors but shall not vote on any matter."

Both the Weiler report and the white paper recommended the establishment of an independent, tripartite appeals tribunal. This standing committee, in its report of December 1983, concurred with this proposal.

I went to the Canadian edition of Funk and Wagnalls Standard College Dictionary and found that "independent" means: "Not subject to the authority of another; autonomous; self-determining; free....Not dependent on or part of some larger group, system, etc.; separate; disconnected....Not affected or influenced in action, opinion, etc., by others...self-sufficient; self-reliant; self-supporting...."

Therefore, I do not see how we can have a chairman of the appeals tribunal as a member, even a non-voting member, of the WCB board of directors and still consider that appeals tribunal to be completely independent.

Clause 86(h), creating the panel of medical practitioners, establishes a random list to be utilized by the appeals tribunal to assist in the adjudication of cases involving medical controversy.

These provisions constitute an unfortunate departure from the recommendations made in the white paper and the Weiler report in that the independent, tripartite medical review panels that were to be established were to contain one doctor appointed by the injured worker, one doctor appointed by the employer and a chairman appointed on the agreement of each of these two doctors.

The draft act contained within the white paper was very detailed in outlining this procedure. Unfortunately, the current draft legislation does not contain a similar outline.

By abandoning these procedures, the government has reverted to the very problem it has set out to cure: a legitimate distrust on the part of injured workers against physicians whom they have not chosen, or perhaps not even met, adjudicating or assisting in the adjudication of their claims.

Under clause 86(n) of the proposed act, the WCB board of directors, not the appeals tribunal, is to have the final say in the interpretation of policy and general law under the act. I can only reiterate my belief, which is a complete reversal of this, as cited in recommendation 11 of my previous brief:

"To be truly effective and independent, the appeals tribunal, not the corporate board, should have the final say as to matters of general law or policy under the act. If the appeals tribunal makes a decision or ruling that is contrary to existing workers' compensation law or policy, then the corporate board should review such a law or policy with an eye to amending it. If, however, the corporate board is opposed to amending such a law or policy, then the matter should be referred to either the Legislature or the courts for a final decision or judicial review."

Again, I feel this can only help to enhance the practice and appearance of independence of the new appeals system and perhaps establish a new means of quality control for WCB laws and policies.

One item that I sincerely enjoyed and admired with the Weiler report and the white paper was the provision for having the decisions of the appeals tribunal published or otherwise made publicly available. Upon my review of Bill 101, no such provision can be seen. Therefore, I can only repeat my earlier recommendation that "the act should clearly outline the intent of the WCB and/or the Ontario government to publish the appeal tribunal's decisions."

Clause 86(q) creates the office of the worker adviser. The only thing I would say about that is that these offices should be geographically independent of both the WCB and the Ministry of Labour and that worker advisers should have the mandate to assist counsel and represent injured workers at any stage of their claims and not just at appeals. This was the recommendation of the committee, but it is not contained in the proposed legislation.

One further thing I would say about the worker advisers is that provisions should be contained within the new act that would provide, in fatal accident cases, for survivors of the worker to be able to utilize the office of the worker adviser as well.

The last part of my brief deals a bit more extensively with rehabilitation, which as I listened to the minister's comments today I gathered would be dealt with in a second phase. I was rather distressed, upon reading the Weiler report and white paper, that they really did not touch on this aspect of the compensation scheme.

The draft act within the white paper did, and this committee made some recommendations in its December 1983 report, but to me rehabilitation is an integral part of the workers' compensation scheme because it is related to so many aspects of a claim; whether or not there will be wage loss, the possibility of the worker having his or her benefits reduced or terminated when the board determines it is now time to cut the cord, poor assessments and compensation rates, etc. Yet the current system of WCB vocational rehabilitation remains one area of the board's activities which is in the greatest need of reform.

It is now entirely possible for the current WCB vocational rehabilitation department to chalk up as a success the fact that an injured worker who has not been able to rejoin the labour force has nonetheless been able to achieve "financial self-sufficiency"; that is he has gone on welfare or CPP, usually upon the advice of WCB personnel. Having done so, he is told, "You are declaring yourself to be totally disabled and thus are removing yourself from the work place." Then the file is closed. This is outrageous.

One of the greatest problems with the vocational rehabilitation system is the fact that it is not automatic and usually has to be instituted upon the plea of the injured worker. Even then, there is no guarantee these services will be extended to him or her, and it usually becomes a matter whereby the injured worker has to prove he or she is worthy of consideration; that is by initially being told by a rehabilitation counsellor to come back in four or six weeks with a list of employer contacts that have been made.

To alleviate this, I would recommend the new act stipulate that injured workers have the right to rehabilitation services and that access to these services be made available as soon as possible. Among the many experts who deal with workers' compensation issues, there is almost universal agreement that the longer an injured worker is out of work due to a disability the harder he or she becomes to rehabilitate. That is why I would recommend that WCB rehabilitation services be instituted automatically and as soon as possible in the claim.

This would not take a monumental effort on the part of the board. From the moment a claim is established the file undergoes automatic reviews for treatment control; therefore, when it becomes apparent the worker is medically able to return to either former or lighter, modified employment, or even before this becomes apparent, the rehabilitation department can be making efforts to contact the former employer to see if the worker's old job is or can be available. If not, then inquiries can be made as to other work that may be available with the accident employer.

If there is none, at that time it should be most obvious the injured worker is going to need some form of rehabilitation assistance; which is rendered by establishing employer contacts in similar industries, in upgrading the injured worker either educationally or by vocational training, or in some cases helping the injured worker establish his or her own business.

Again, I had hoped Bill 101 would incorporate the provisions



set out in section 36 of the draft act contained within the white paper. This to me is certainly more detailed and broader in scope than the current rehabilitation provision, section 54, of the current act. In its December 1983 report, this standing committee recommended that section 36 of the draft act be adopted in the new legislation and that the board "should aggressively upgrade and broaden vocational rehabilitation services for injured workers."

11:40 a.m.

I concur with this and would hope the government will include these provisions in the new act, and also that the government would consider in the new act my proposals that rehabilitation services should now be considered a right to which injured workers are entitled and these services should be implemented automatically and as soon as possible in a claim. I reason that by doing so everybody would benefit: injured workers because they will be returning to the labour force when they are able and enjoy a lifestyle and standard of living to which they have been accustomed; employers, because the sooner injured workers can get back to work the cheaper their WCB rates and assessments will be; and the board itself, because the sooner it is able to help injured workers return to the labour force, then the chances for rehabilitational and attitudinal conflicts and failure will be reduced and the problems that occur with prolonged claims can, to a large extent, be avoided.

I think I should stop there and entertain any questions the committee members may have.

Mr. Chairman: Thank you very much, Mr. Griffith. The first speaker I have down is Mr. Wrye.

Mr. Wrye: Thank you, Mr. Chairman, I have a number of questions for the minister and for Mr. Cain but, first, I have a question for Mr. Griffith.

I noticed in your earlier brief that you referred to an upgrading and liberalization of the clinical rating, clinical disability or scheme that we now have in place. I notice you have not commented on that today. Maybe I could start out by way of a first question on that issue.

What is your reaction to the fact that the clinical rating scheme has been maintained with apparently no changes? Do you favour maintaining that scheme, or should this committee be looking at going back to something either that the committee majority proposed, one of the minority reports or, indeed, what Professor Weiler proposed?

Mr. Griffith: I still maintain the recommendation that I made, that clinical awards should be comparable to awards made in the courts of law during personal injury suits. As you stated before, injured workers have given up their rights to sue and, in so doing, they lose out on a number of things.

I would liberalize the clinical rating schedule to those levels, but I would also maintain a continuous pension to give the



worker some security during periods of rehabilitation or wage loss.

Mr. Wrye: Maybe you could help the committee. You talked about liberalizing to the level which the courts are now giving. Let us deal with a hypothetical example. A serious back injury now might garner a 30 per cent clinical rating, 30 per cent pension for life, which works out to about a little less than one half of the current benefits that an injured worker would receive while on total temporary. What would that be upgraded to, in your mind, in terms of--

Mr. Griffith: I think the reason the awards in the courts are more liberal is because they take into account the pain and suffering and psychological problems related to a disability. I notice that Bill 101 does make provisions for permanent disability, meaning the psychological after-effects. It is treated separately.

It looks to me like it would be dealt with when it becomes a problem and not dealt with as a problem, except that it is an automatic problem when there is a serious injury to the level of, let us say, 30 per cent.

I think I would liberalize it to automatically recognize the fact that it is serious and that there will be pain and suffering and other psychological effects as well. I think that is why the awards in courts tend to be higher.

Mr. Wrye: Two of the unanimous recommendations that came from this committee but which are not dealt with in the bill are the definition of "suitable and available" and also the limited right of return to previous job, which this committee wrestled with, ultimately successfully.

Do you see any reason why this committee could not write in those changes, which were among the most important, at least to my way of thinking, that we discussed?

Mr. Griffith: No. I think there should be suitable employment, taking into account the claimant's own doctor's opinion and what he is medically capable of in the opinion of his treating physicians. I think that should be incorporated in the act.

Mr. Wrye: If I might, I have one question to the minister. I really do not understand why that issue and the whole issue of vocational rehabilitation has been put off to phase 2. Maybe you can expand on that. I know you made mention of it in your statement. Is there some reason why the ministry has rejected expanding the definitions and putting pressure in terms of reducing assessments on accident employers such as this committee recommended in December? Is there any reason why we are starting from that point?

Hon. Mr. Ramsay: I cannot expand any further than my comments earlier this morning. As far as the definition is concerned--Mr. Cain, do you have any comment?

Mr. Wrye: We set up criteria on the definition of "suitable" which, as Mr. Cain knows, mirrored closely the Saskatchewan definition. We asked for the Saskatchewan definition, looked at it and reworked it somewhat. We reworked it to the satisfaction of all members of this committee. It was a unanimous view. I am very disturbed that we have not begun to move in that area. Over and above the wage loss or clinical disability and a liberalization of it, or even the present disability rating, there is no reason we cannot begin to move in that area now.

Hon. Mr. Ramsay: Perhaps we can take that under advisement and have another look at it.

Mr. Wrye: I would like to ask one last question. This is an excellent brief. The emphasis on vocational rehabilitation is something this party supports, particularly the emphasis on the right to vocational rehabilitation from day one, if that is deemed to be appropriate. I hope it would be much more extensive.

Under vocational rehabilitation, I have been given to understand by people I have talked to who work for the board that those who work in the area of vocational rehabilitation have quotas of cases they must close, successfully or otherwise, within a given period. Does that exist? If so, on what basis does it exist?

Hon. Mr. Ramsay: I am certainly not aware it if it does. Mr. Cain, are you aware?

Mr. Cain: I would have to check on it to be specific. I assume what we are referring to is the expectation that a vocational rehabilitation officer would conduct a certain amount of work, but not that he would close a certain number of cases because I think that is quite impossible. One does not know how many one can close and so forth. It is probably more in terms of work produced, work dealt with and people looked after. I would be more than happy to clarify it precisely for you.

Mr. Wrye: I share your sentiments. What bothered me about the information that came to my attention--I do not have any proof and I wish I had printouts--was that quotas for closing cases exist at the board. In enhancing vocational rehabilitation, that is exactly the wrong way to go. There is no doubt that rehabilitation officers may get a number of very difficult cases all at one time and may not be able to close them. If we are doing that, we are into a situation where an officer may be trying to close cases that are simply going to add to the board's assessment over a period of time.

Hon. Mr. Ramsay: I would be very surprised by that, but I welcome the opportunity to check on it and get the information for you.

Mr. Laughren: This may not even be an appropriate question. You state in your submission that you have established your own business. How does that work? How do you get people to come to you? How do you charge them? How do they know who you are and where you are?

11:50 a.m.

Mr. Griffith: As I stated to the committee on my first appearance, I worked for five years, from 1977 to 1982, in a legal aid clinic. I held the positions of office manager and secretary to the board of directors. From 1982 to March 2 of this year, I represented some old clients and clients I picked up along the way, basically on a pro bono basis. In March 1982 I decided to create my own business. I got sick of being out of work for two years. I am basically getting clients who are dissatisfied with the Ontario legal aid system and the clinics that have been founded to represent them. I get a lot of my old clients I had at the clinic and I get some other people who are not satisfied with the service they are getting there now.

Mr. Laughren: Do you charge a contingency fee?

Mr. Griffith: No, I do not.

Mr. Laughren: A flat rate?

Mr. Griffith: Yes.

Mr. Laughren: This is not meant as a comment on Mr. Griffith, but it is a sad commentary when injured workers have to pay to get justice. Perhaps the minister should let that run through his mind.

Mr. Griffith: It is a commentary, I think, on the Ontario legal aid system. Clinics that have been created to represent injured workers just do not do so. They get into other priorities. Case work and representing injured workers go by the wayside.

Mr. Laughren: The fact that injured workers have to have either you or the legal aid system is a sad commentary.

Mr. Griffith: I think having offices of worker advisers is one step towards alleviating that.

Mr. Laughren: My other question has to do with worker advisers. When I read that section in the act, it does not say worker advisers should not advise survivors. Did you read into it that it was not for that purpose?

Mr. Griffith: No. There was some discussion of that in the December 1983 report of the committee. I just thought it should be outlined in the act.

Mr. Laughren: Does the minister have a comment on that--

Hon. Mr. Ramsay: We intend to do that.

Mr. Laughren: --because that was my sense?

Hon. Mr. Ramsay: There was never any thought of not doing that.



Mr. Laughren: No, but perhaps Mr. Griffith's point is a good one. There might be a minor amendment to state explicitly for people who are not part of this committee and who read the act that, yes, there is a right for survivors to have access to worker advisers.

Mr. Lane: I think the brief was well put together and pretty well expressed your concerns regarding the bill.

Mr. Griffith: In a short period of time too.

Mr. Lane: I thought on page 10 you passed over one section rather too quickly. I would like to ask you a question on it. You say, "If employers were truly worried about their WCB rates and assessments, then they should make it their ultimate responsibility to ensure that their work places and working conditions are safe and accident-free." I could not agree with you more. It is far better if the accident never happens. Do you think experience rating would encourage employers to be a little more safety-conscious?

Mr. Griffith: There is no real proof of that.

Mr. Lane: I know there is no proof, but what do you think about it?

Mr. Griffith: I think what should take place--coincidentally there was a good editorial in the Toronto Star on Saturday, "Improve Work Place Safety"--is that the safety inspectors should be beefed up to the point where they are not calling employers ahead of time saying they are going to be there next Wednesday, then coming in and being wined and dined in the front offices while the workers are out in the back cleaning up the mess, which has been my experience. They should come in the back door unannounced and inspect it as they see it.

One of the concerns, as I mentioned in my previous brief, was that there is a temptation to put up with a little danger in a working environment rather than closing it down and sending workers to the unemployment insurance lines until the work place is cleaned up. That type of attitude has to change. If safety inspectors walk into a place and find it dangerous and unsafe, they should close it down and assess it and penalize the employers right then and there and make the provision they are not to operate until the work place is safe and danger-free. Beefing up the safety associations and providing for safety inspectors to hold impromptu safety inspections would put more teeth into the act than it currently has. I also agree with this committee's recommendation that the fines and penalties should be greatly increased.

Mr. Lane: I would like to think there would be some encouragement to do it on a voluntary basis rather than on a--

Mr. Griffith: That has not been the case, though. There are more and more accidents. The members of the committee agree that there are far too many accidents every year, so there has not been--



Mr. Lane: We really have not been using the experience rating in the true sense of the word. If you are in that occupation, you are paying that particular rate. I think if experience rating were truly being utilized, there would be a lot of encouragement to improve your rate by having no accidents. I do not think it is very conducive right at the moment to--

Mr. Griffith: I made reference in my previous brief to the study conducted by Professor Terence Ison of the New Zealand compensation scheme. There is quite an extensive critique in it of the merit rating system and the fact that there is no guarantee the employers will create safer work places, the disincentive to rehire injured workers, this type of thing. I would refer you to it for an excellent critique of merit rating.

Mr. Havrot: May I have a supplementary to that? You are referring to the employer as the culprit here in having unsafe working conditions, but when you relate it to being involved in the forestry industry for quite a number of years, the training or education of the worker is most important in safety practices too. We used to have a horrendous problem trying to get our men to wear safety hats, for example, and safety-toe boots. They would take the hats off and get whacked by a widownmaker, for example. There were a lot of paraplegics and there were a lot of deaths just as a result of carelessness on the part of the workers. There is no way you can hold the employer responsible when the worker goes three or four miles from the camp to cut trees and pulpwood.

We got involved by having the lumbermen's safety association come in to show films and give an update on the latest safety features in chainsaws, headgear, knee protectors from chainsaw cuts, nylon pants and so forth, which a lot of the men will not wear.

I remember that in 1977, when the asbestos mine closed down, they were required to wear masks in the room where the asbestos fibres were flowing, a very dusty room in the mill, and the minute the foreman turned around and left the room, a lot of the employees would take the masks off or put a hole in the respirator and smoke a cigarette.

So it is not just the employer; it is also the education of the employee. Give him a proper directive and training so he will realize the hazards of the work place too.

Mr. Griffith: But again it is the responsibility of the employer to educate the workers properly about the dangers involved and the proper use of safety equipment.

Mr. Havrot: With the safety committees--and a lot of employers have their own safety committees now--when they bring a new man in they train him, the same as in the mining industry.

Years ago my father worked in a mine for 29 years and never had a day's instruction. When he first started working he learned through experience without training. He just learned the habits, whether they were good or bad, of the experienced miner he was working with. Now the mining industry has also seen the results of

training its men, new men coming in particularly and starting to work underground, so they are properly trained and given all the training in safety in underground operations.

It is not just the employer; it is a joint effort of the employee and the employer working together to promote safety in the work place.

You are relating to industrial accidents perhaps and to some areas where the employer is careless, say, in ventilation, work habits and so forth in a plant, but when one is working in the forest industry--

Mr. Laughren: Like asbestos.

Mr. Havrot: Like asbestos, yes.

12 noon

Mr. Griffith: One comment I did want to make on that was that, like my friends on this side of the room, I find the commercials put out by the Construction Safety Association of Ontario and the Workers' Compensation Board generally to be offensive. They make the worker out to be the captain of his own destiny. They do not take into account the fact that there are unsafe working conditions that he has to be exposed to.

Mr. Havrot: It is a sad situation, but if we were able to legislate people to be more careful in the work place--but you cannot legislate them; you have to train them and show them the hazards of the work place. This is what has happened.

Now dealing with the safety associations: We had a horrendous compensation assessment based on experience rating, as John was just pointing out here. The compensation assessment--this was a few years back--in logging was 13 per cent for every \$100 earned, and for pulpwood it was only \$3. The pulpwood industry was well organized and had safety programs in its camps. Finally, they amalgamated the two together. By having the logging association and the pulp wood association get together, they were able to reduce the rates to about six per cent. Everybody benefited from it, but it was a result of safety programs. They were implemented by the lumbermen's safety association, which came into the camps to show films and demonstrate various methods for working safely in the bush. As a result, the rates dropped dramatically and we had fewer injured workers.

Mr. Lupusella: Mr. Chairman, if I may reply to the comments made by the member for Timiskaming (Mr. Havrot), I would like to make sure that the law will be applied equally for the employer and the employee. I do not see any particular distinction. I think the main emphasis of the whole process is first of all to clean up the work place, and then the implementation of the law should be applied equally. I do not have any disagreement with that.

I have two questions for Mr. Griffith. Considering that your grammar is better than mine, do you have in front of you Bill 101?

Mr. Griffith: Yes.

Mr. Lupusella: Can you make any comment in relation to section 39, page 32 of the bill, which relates to the Human Rights Code of 1981? There is a subclause which states: "an injury or disability for which benefits were claimed or received under the Workers' Compensation Act." If there is a disagreement between you and I, I hope the minister will get involved to clear up the situation. We are faced with two past tenses, "were claimed or received," which means that if an injured worker had received and his case was closed then he is covered by the Human Rights Code.

I would like to focus your mind on a typical situation, that of a person receiving benefits from the board at the present time and being dismissed by the employer. Is he covered by the Human Rights Code, based on this particular clause? What is your interpretation?

Mr. Griffith: If you are stating that amendment should be written in such a way as to include the present tense as well, I would have no objections either.

Mr. Lupusella: Do you think injured workers, while they are receiving benefits from the board, are not covered by the Human Rights Code if they are dismissed by the employer? Am I correct?

Mr. Griffith: It is usually a case where the injured worker will not even get hired by an employer if there is any hint that there was a compensation case in the past as a result of which he is in receipt of a benefit of any kind.

Mr. Lupusella: Do you think this subclause should be replaced to make it clearer and to cover everybody?

Mr. Griffith: Your point is well taken. It should be made clearer to the point that it would cover both the past and present tenses of the words "claimed" and/or "received."

Mr. Lupusella: I would like to refer the question to the minister. Am I correct that with the present phraseology of this subclause, we are just covering injured workers who receives WCB benefits; if a person gets injured and receives benefits from the board and is dismissed while he is receiving WCB benefits, he is not covered by the Human Rights Code?

Hon. Mr. Ramsay: That is not my understanding of it. You are just concerned about the wording in here, are you?

Mr. Lupusella: No, I am concerned about the verbs that are included in the subclause, "an injury or a disability for which benefits were claimed or received," which means that--

Hon. Mr. Ramsay: If you never claimed, therefore, you never received.

Mr. Lupusella: No, no. Let us think about two hypothetical cases. I got injured, I was paid by the board. My



case was closed by the board and I am going back to work. I lost my job with my previous employer because there was no job available whatsoever. I am looking for a job. The new employer or the same employer is aware that I got benefits from the board, that I have been under WCB, and he will not hire me. Under this clause, I am covered under the Human Rights Code.

Hon. Mr. Ramsay: Yes.

Mr. Lupusella: The second hypothetical case is that I get injured with your company, I am receiving WCB benefits and after three months, while I am receiving WCB benefits, I receive a letter from you saying, "You are dismissed because you are injured and I need somebody else in your place." Am I right that I am not covered by the Human Rights Code?

Hon. Mr. Ramsay: You are still covered.

Mr. Laughren: Because you have received benefits.

Mr. Lupusella: Can we make it clear that even the people receiving WCB benefits will be covered by the Human Rights Code? I get the impression, unless my grammar is wrong, that I am not covered.

Hon. Mr. Ramsay: You are covered. We will take a look at the wording, Mr. Lupusella.

Mr. Lupusella: I get the feeling that I am not covered if I am dismissed by an employer while I am receiving WCB benefits. It gives me the impression that when the case is finalized, I cannot be discriminated against by the employer because I received WCB benefits.

Hon. Mr. Ramsay: That is a good point and we will take a look at it.

Mr. Lupusella: Mr. Griffith, I would like you to take a look at page 31, subsection 135(5). It relates to the supplement pension. "Where the impairment of earning capacity of the worker is significantly greater than is usual for the nature and degree of injury, the board may supplement the amount awarded for permanent partial disability for such period as the board may fix unless the worker (a) fails to co-operate...or (b) fails to accept or is not available for employment which is available...."

Considering that you have had a lot of experience in dealing with WCB, do you see any particular change--

Hon. Mr. Ramsay: Mr. Lupusella, no one has more experience than you have in dealing with compensation problems.

Mr. Lupusella: Minister, I would like to thank you, but I think there are a lot of people who have been faced with problems in dealing with injured workers.

Mr. Griffith: You are looking for the word "shall" to be replaced--



Mr. Lupusella: I am not talking about that. First of all, do you think there is a change between the present system and the new system with the wording of subsection 135(5), or are we going back to the status quo, which is the present system?

Hon. Mr. Ramsay: I understand that has not been changed.

Mr. Lupusella: Do you think the verbs "may supplement" or "may fix" should be changed to "must"?

Mr. Griffith: To the word "shall"?

Mr. Lupusella: Or "shall."

Mr. Griffith: That would certainly be an improvement.

Mr. Lupusella: Do you not think it will be a great improvement and the injured workers will not appear before a peer system, because at the present time the board has too much discretionary power with the two verbs "may supplement" or "may fix unless"--

12:15 p.m.

Mr. Griffith: That is true.

Mr. Lupusella: I hope we are going to change those two verbs, because we have clauses (a) and (b) which are complementary to the specification of subsection 135(5) of the act under section 37 of the bill. Why do we have to give this discretionary power to the board when we have clauses (a) and (b) which clarify the position of the injured worker to get a supplementary pension?

My concern is that the board in the past and at the present time has been reluctant to award supplementary pensions under the present system if the degree of disability has been in the range of two per cent to 10 per cent. Above 10 per cent the board is more lenient to give supplementary pensions, considering that the injured worker is co-operating with the rehabilitation department and so on, and is willing to accept available employment.

However, even though the injured worker is complying with clauses (a) and (b), the board has the final say with the verbs "may supplement" and "may fix." There is too much discretionary power in the hands of the board. I do not think it is necessary.

Hon. Mr. Ramsay: We are making careful notes of all this.

Mr. Griffith: I think the greatest amount of discretion applies to the words "is greater than is usual." In the current policy there are a number of criteria to be considered, and I think that is where the discretion lies. Your point is well taken on replacing the word "may" with "shall."

Mr. Chairman: Thank you, Mr. Griffith, for your appearance before us and your assistance to the committee. Mrs. Banks is here.

## MADELINE BANKS

Mrs. Banks: Mr. Chairman, my name is Mrs. Banks. Of course, a lot has been covered under survivors' benefits--

Mr. Chairman: Excuse me. You do not have a brief for us, do you? You just want to make a verbal presentation.

Mrs. Banks: I will just take a few minutes of your time.

Hon. Mr. Ramsay: Mr. Chairman, I am anxious to hear what Mrs. Banks has to say. I am going to have to leave in about five minutes. The schedule this afternoon does not look all that busy. Not wanting to shortchange you in any way, Mrs. Banks, would you be averse to coming back this afternoon and starting off right at the top? I should not be the one asking this.

Mrs. Banks: I can come back this afternoon.

Hon. Mr. Ramsay: I am very anxious to hear from you in particular.

Mrs. Banks: Yes, I know.

Mr. Chairman: If you would consent to that, Mrs. Banks, and come back at two o'clock we will hear you right off the bat.

The committee recessed at 12:15 p.m.

CA 24N  
XC13  
-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, JULY 16, 1984

Afternoon sitting

ALBANY

## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

Welton, I., Senior Liaison Officer, Program Analysis and Implementation

Witnesses:

Banks, M., Private Citizen

From the Council for Franco-Ontarian Affairs:

Lalonde, G., President and Chairperson

Nazaire, D., Secretary-General

Neatby, J., Member

Cornish, R. C., Barrister and Solicitor



LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, July 16, 1984

The committee resumed at 2:07 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Mr. Chairman: I call this afternoon's session to order. We had asked Mrs. Banks to come back this afternoon. Mrs. Banks, if you would like to take a seat at the table, please.

Mr. Lupusella: Before we start with this deputation, I would like to make just one remark about the proceedings of the committee, if I may. I apologize for the fact that I did not raise this point in the past, but I think it will be useful and fruitful even though some members will hate me after hearing what I have to say.

Mr. Chairman: They hate you now; so what the heck.

Mr. Lupusella: Mr. Chairman, we are embarking on some changes affecting doctors and specialists across Ontario, and especially doctors and specialists who are in contact with the Workers' Compensation Board on a daily basis regarding injured workers and so on. They are participating in the process of assessment of injured workers' pensions. They send reports and everything. They will be selected, under Bill 101, to form an independent review panel and so on.

It would be fruitful for the committee to send out a note to the doctors and specialists indicating that if they wish to do so, they may appear before the committee. It would be a golden opportunity for us to question them on the clinical rating system, which will be also part of our study in phase 2 of these deliberations. I hope this process will not be delayed any further so we can compile material and information about the doctors' involvement with the board. I am sure they would like to see changes as well, and they can assist the committee, the minister and the board in voicing their particular concerns, because the law will affect them as well.

If there is general agreement, even though it might increase the activities of the committee in the course of these public hearings and so on, it would be useful at this point to send out a notice to them as well.

Mr. Chairman: Mr. Lupusella, to the best of my knowledge, we have simply advised those who appeared before us before. As you know, we did not do any public advertising. We advised those who had appeared before the committee before or had previously sent in submissions. I do not recall specifically getting in touch with the medical profession.

Mr. Lupusella: No. That is why I apologize for the fact that I did not raise this point before so the clerk could send a

notice to the doctors and specialists that they could appear before the committee if they wished to do so. We still have time to send out notices if there is agreement by the committee members.

Mr. Chairman: Might I ask the minister if he knows whether the ministry, or the board for that matter, has had any formal dialogue with the medical profession in general?

Hon. Mr. Ramsay: The board certainly has as far as rates are concerned, but other than that--

Mr. Cain: We do on occasion meet with the Ontario Medical Association if particular problems arise. It does not happen often, but on occasion it becomes necessary.

Mr. Chairman: I suppose there would have been some dialogue with the OMA in respect to whatever that particular clause is about the medical review panel. I think there would have been some dialogue with the OMA in establishing that while it was being drafted.

Mr. Cain: I cannot say for certain, but to my knowledge there was not. However, there may have been. Because it was legislation to deal with an appeal system and to address the issues of the various witnesses who came before your committee, I can say those were the main points that were addressed in developing that piece of legislation.

Mr. Lupusella: I do not think it would be difficult to get the official names of doctors and specialists and to send out a notice to see whether they wish to appear before the committee. Perhaps we could include a copy of the bill, which will affect them eventually.

If we are going to invite the Ontario Medical Association, I do not think that will be a general reflection of each particular practitioner who has concerns about the new format or concerns about what will affect them in dealing with the board on a daily basis. I think each doctor and specialist should receive a notice or an invitation to appear before the committee if he so wishes. They must be aware of the process.

Mr. Riddell: Mr. Chairman, I do not have any objection to notifying doctors. There are many doctors who are frustrated about this whole process, even to a point where they are most reluctant to fill out forms for disabled people any more. They tend to say: "Go see your member of the Legislature. We do not feel we have the time and all the rest of it."

Perhaps it is time we had some of these doctors in to vent some of their frustrations and let us know their feelings. Doctors in my riding are frustrated with the system. I would like to hear from them. I have no objections whatsoever.

Mr. Chairman: How do we go about contacting them? Do we just contact the Ontario Medical Association to advise them?

Mr. Lupusella: We could get the official list of doctors and specialists operating in Ontario. I wish to make a

Mr. Chairman: Would your suggestion be that if they want to appear--

Mr. Lupusella: Or to make submissions.

Mr. Chairman: Or to make submissions; the clerk has advised me that it will probably be at least the end of the week before anything would be sent out. That will give only two weeks for a reply as to whether they are going to have anybody available to come in to see us during the three-week period we are now sitting. It may be that we would have to consider opening it up in September, and if we do that for one segment, are we going to open it up for other people who want to come in?

Mr. Lupusella: Mr. Chairman, with great respect, I know the constraints under which we are operating, but we contacted the employers and the injured workers, and I think doctors are more a part of the Workers' Compensation Board process than the employers who pay the bill. Actually, they are supposed to fill out forms when they decide on the degree of disability on behalf of injured workers for months and even years, and I think our role as a committee would be incomplete if they were not contacted.

Mr. Chairman: I am not really discussing this; I am just thinking out loud. Although this time we did not formally contact anyone other than those who had made submissions before, either verbal or written, the last time we had hearings they were well publicized across the province, and we had no submissions from the doctors at that time. We did from other health-related groups, such as the chiropractic association. It still has a great interest in this, but the medical profession in general did not respond. It is up to the committee entirely.

Mr. Lupusella: If there is no co-operation, either they do not have an interest in appearing before the committee or maybe there are some who will send us written submissions. I think we have to make an official request to them and attach a photocopy of the bill.

Mr. Chairman: I suppose there is no reason in the world, if there are no negative responses to it, why we could not send a copy of the bill.

Mr. Watson: What are you proposing? Are you are going to send it to the association, or are you going to send it to all the doctors?

Mr. Chairman: The association, I think. Let it notify its members in some of its regular publications. I would suggest that, but I do not care; it does not matter to me.

Mr. Lane: There is just thing wrong with that, Mr. Chairman. We have not invited any groups other than those that were here last year. If you invite the doctors, then who else is going to feel left out?

Mr. Lupusella: Nobody else, because there would be no contact except for doctors and specialists who receive official notice of the hearings in their publication.



Mr. Laughren: They will come. Just tell them we are debating the fees that the WCB will pay them.

Mr. Chairman: If we make copies of the bill available to the Ontario Medical Association and ask the association to advise its members, is that satisfactory? Would that do the job for us?

Mr. Riddell: I suggest that would be the way to go, to have the OMA contact its members. I am sure we as members of the committee will also contact the doctors who have expressed some concern to us and try to encourage them to come in and make presentations. I would be surprised if the medical profession did not want to feel represented at these hearings.

Mr. Chairman: Sure, but I cannot help thinking that the profession, with the research people it has available, is aware that these hearings are going on. For instance, I read some of my mail today, and the Ontario Hospital Association has a blurb in the little pink FYI it sends out that these hearings are going on. People with that level of research staff are aware of it, so I would think the medical profession certainly should be aware.

If that is the wish of the committee, we will send out a general notice to the association, encourage a submission and send a copy of the bill. Is that agreeable to everybody?

Agreed.

2:20 p.m.

#### MADELINE BANKS

Mrs. Banks: My name is Madeline Banks and my submission is on the survivors' benefits and all that was said this morning. I thought maybe you would like one of my opinions on it because I happen to be one of them.

I agree it is hard to change it with a level system, but my understanding was that the ones who get pensions now would have them raised. I can tell you that \$29 is not much. My taxes are \$100. The insurance will come in. What does it leave?

I have opinions and ideas. I am no different from the president of this corporation who was responsible for my husband's death. He said to me, "My wife would not expect to live in the way she had become accustomed to." This year his salary is more than \$600,000.

My husband had worked for this company for 34 years. They were charged, found guilty and I get no pension from them; 95 per cent of the private pensions are that way. You are all civil servants, so the survivor's pensions continue for the rest of their lives and their Ontario health insurance plan premiums are paid; mine were cut off.

We all have these expenses. As you saw on the weekend in the paper about accidents, in Canada it was one in seven, in the United States one in 17 and in Europe one in 10. Do you not



think--because I know what the president of the corporation said to me--that he knows the accident rate here is higher than in the United States?

In the United States, under these circumstances, I would have been able to take this corporation to court, and I am sure I would have got a better deal than \$279 a month.

In Europe, as you know, if a company is charged and found guilty in the death of an employee, the president could be put in jail. Here we have cheap insurance; so they pay a few bucks and say: "Workers' compensation will look after it. They cannot do anything to us." I spoke to the president and that was his attitude. I spoke to the vice-president. Nobody came near me when my husband was killed because I had asked the wrong questions that night. I knew what went on there.

Even in their magazine, they did not have the right weight of the object that killed my husband: they were 500 pounds out. Do you think they have an interest? I do not. When I asked the vice-president, he said, "We did not know we had that heavy material at that branch."

This was a corporation with 55 branches across Canada at the time my husband was killed. They have cut down now. Somebody is not telling somebody what is going on. When I spoke to the vice-president of the branch my husband worked for, he said, "I will send somebody." I told him: "Go yourself unannounced. That is the only way you are going to find out, and I think that is the only way the labour board is going to find."

Have any of you who have ever worked in a factory? I know that in my first job if the machinery ran better without a guard on the belt, the guard was taken off, but when they were told inspectors were coming everything was put on. Do you not think they would find out more by going unannounced when they find there has been an infraction of the law by the companies? I think they would.

I agree that with the tier system it is hard to bring it all in, but I was very disappointed that nothing was done for people who are getting compensation now. Take these families in Sudbury. I know that one was not married, but three are. If a woman has children, how in heaven's name can she manage if she has a mortgage? With \$593 for mortgage and taxes alone, what would she live on?

The company is at fault. When a company is not at fault, okay. We are not allowed to go to court and we just have to take what is given to us. You really put us on welfare. Fortunately for me, as I told you, my husband and I had been preparing for retirement. My house was paid for and my children were educated. Thank God for that, because I do not know what I would have done with \$279 a month. That was just six years ago.

Had my husband lived and had he been retiring this year, his salary would have been up 30 per cent, even with the six and five. He could have retired on 70 per cent of his income. That is

considerably more than \$593.

When I become 65, how much of that pension am I going to get? Does anybody know? Am I going to be cut off? I am back to square one with my old age pension of \$280.

Hon. Mr. Ramsay: There is no change in your pension.

Mrs. Banks: The old age pension will not be subtracted like the Canada pension?

Hon. Mr. Ramsay: No.

Mrs. Banks: It really leaves a bad taste in my mouth. When I spoke to Professor Weiler, he said he did not see why I should not expect to live in the manner to which I had become accustomed. Does it mean because somebody killed my husband, I should go on the pogeys or another department should keep me? I do not think so. The taxpayers should not have to keep me.

I think if companies were to pay for these accidents, you would see them clean up their act. The vice-president would see that their acts were cleaned up. In a big corporation like that, if the man who is responsible for different branches can run his branch at a good level, he can get an extra bonus.

In the case of my husband, he did not get the proper equipment. Fortunately, my husband was killed instantly. He did not suffer. That is the only thing, thank God. But because I had asked the questions that were asked in court, the night my husband was dead, nobody came near me.

I know what you said about the forest industry, but the man who sits in that upper chair does not give a damn what goes on at the bottom. If he did, do you think that would have happened to my husband? They would have known what was there.

Mr. Havrot: Mrs. Banks, may I just ask you a question? What was your husband's occupation?

Mrs. Banks: He worked for Gulf Oil.

Mr. Havrot: What type of work was he doing?

Mrs. Banks: He was a driver, but that night they were loading a sign to go to Thunder Bay. Instead of getting the proper equipment, they had a logging truck, a flatbed truck. There was nothing to support the sign. They used a front-end loader to put on the sign. My husband was standing on the truck. The sign was 1,500 pounds. The cable was rotten and it snapped and threw my husband off the flatbed. If that had happened on Highway 400, do you know how many it would have killed?

Mr. Havrot: Was the front-end loader company-owned too or was it a hired one?

Mrs. Banks: The front-end loader was company-owned, but the flatbed was from somebody up in Thunder Bay because they were

taking the sign up there. The company was charged in April and within another year, the following May, a man was killed in Clarkson in a chemical accident through poor maintenance of the pipes. Did they learn their lesson? They were fined \$2,000 of course. Can anybody tell me if anybody was ever fined the \$25,000 it is up to now?

Hon. Mr. Ramsay: Yes, they have.

Mrs. Banks: That is all the company was charged in my husband's death, \$2,000. They cleaned up their act after I went to see the president and the vice-president. I got him at a shareholders' meeting because I knew there would be no way I would get near his desk. When they were on Bay Street, you could not get off the first floor. I spoke to him personally. I did not get up to the floor. I wanted to give him his chance to have his say.

This is the attitude they took. His wife would expect to live in the manner to which she had become accustomed. Children love to look after their parents, but why should my children have to look after me?

I am telling you facts. How many companies take this attitude?

Mr. Havrot: It is hard to say.

2:30 p.m.

Mrs. Banks: I know they have hard hats and boots. That did not help my husband any. It was either him or somebody else who would have been on that flatbed when the cable broke, but they used a logging truck instead of renting the equipment to move that sign. There was nothing to support the sign, and then they tell me they did not know they had anything that heavy at that branch. How much of this does go on?

How how do you expect those women in Sudbury to live on that? You know what mortgage payments are today. As I say, the \$593 would be eaten up just by that, so what do they live on? I do not know if Inco pays benefits to the widows or not but, as I say, Gulf does not.

Mr. Riddell: Mr. Chairman, as a matter of interest, when inspectors do go out to check out a plant, do they inform the company officials they are coming or do they walk in unannounced?

Hon. Mr. Ramsay: For the most part they walk in unannounced. There are cases where arrangements are made in advance, but for the most part they are unannounced.

Mr. Laughren: Mrs. Banks, I think some committee members feel as you do about the level of benefits for survivors; that is why the new act is going to make substantial improvements for survivors. I guess what we need is a sense out there that there are enough people like you who would like to see present survivors such as yourself have their level of benefits improved when this new act comes in so we do not have two classes of survivors.



Mrs. Banks: That is what I thought. Professor Weiler had suggested that; I know because I spoke to him. On page 68 of the White Paper on the Workers' Compensation Act it says: "Dependent survivors receiving benefits under the existing act will not be allowed to transfer to the jurisdiction of the new act, due to the substantial differences in overall approach. They will, however, be granted an annual adjustment to the existing act's flat benefits on a basis consistent with the adjustments being made by regulation for claims filed under the new act."

Then on page 131 of the final report of the standing committee on resources development in December 1983 it says: "Dependent survivors will not be allowed to opt in. Dependent survivors will have to be content with the old system. In other words, they will be denied the improved benefits available to dependent survivors who lose the family breadwinner after the new system is introduced. As a sop to the Tory conscience, however, they will be eligible for 'annual review' and possible (but not automatic) inflation adjustment as the government majority has proposed under recommendation 8. Our position, of course, is that all benefits--for injured workers and for dependent survivors--should be automatically and fully adjusted for inflation on a quarterly basis."

But that \$29, as I say, does not pay anything. I am going to pay the \$100 that my taxes went up, and is there any reason I should have to give up my home?

Mr. Laughren: I do not mean to belabour it, but I really hope the minister will think about this whole problem of survivors and the two classes of survivors he is establishing. I do not expect him to make a commitment here this afternoon, but I really am glad Mrs. Banks came here today; it is good to have that personal evidence of it.

I really think it is one of those things where the minister might very well explore the costs and just see what is possible because, even if we do not plug the existing survivors into the identical new system, we should at least make it a little more humane than it is now. Let us face it, by making major improvements he is admitting it is grossly inadequate at the present time. The employers in the province, and the board, recognize that as well. If you recognize that, I do not think it is appropriate to simply walk away from those existing survivors. Even though as years go by they will become fewer in number, I do not think that is the appropriate legislative approach. I sneak a final pitch to the minister in that regard.

Hon. Mr. Ramsay: I will say this for the last time. I have indicated three or four times this morning I am approaching these hearings with an open mind. I am going to listen to every person who comes before us, but I hope we will not have to go through the same charade every time some witness comes before this group where you turn to me and say, "I hope the minister will give this serious consideration." The answer to that question now and for the rest of these hearings is, "Yes, I will." I intend to look very carefully at each and every point that is raised.



I have a person here who is summarizing every point that is being made. We will look at everything. I am interested; this government and this minister are not insensitive to all of these problems. We are trying to resolve as many as we can within our present resources.

Mr. Laughren: If I did not believe that and agree with you I would not bother making the pitch to you; but I would remind you this has come up before and you have not responded.

Hon. Mr. Ramsay: We have responded, with respect, with a bill that has made major steps forward. What you are suggesting is a few more steps forward, and we are prepared to look at them. Please do not minimize what we have already done.

Mr. Laughren: I threw bouquets at you this morning for the improvements in the survivors' benefit--

Mr. Chairman: That is when we started to worry.

Mr. Laughren: The only pitch I am making now is that if you think the survivors deserve a substantially better deal, then surely you must admit the existing survivors deserve a substantially better deal as well. That is my only point, and yet you seem to dig in your heels and get very defensive when we make that pitch to you.

Hon. Mr. Ramsay: No, I am not defensive about--I am only defensive--well, never mind. The point I am trying to make is I do not want to be reminded for the rest of the three weeks that I am cold and insensitive to the points that are being brought to my attention. I fully intend to look at each and every one of them and try to resolve them within the resources that I have.

Mr. Laughren: I am a great Canadian nationalist, but you will excuse me if I have to confess I am from Missouri.

Hon. Mr. Ramsay: I said "try."

Mr. Laughren: I know you did.

Mr. Chairman: We are trying to discuss as a committee the various proposals--

Mr. Laughren: That is true.

Mr. Chairman: --arguing the clause-by-clause debate. The purposes of our witnesses coming in today is to hear the other side of all stories.

Mr. Lupusella: I concur with the position expressed by my colleague. I do not want to make a further pitch--

Hon. Mr. Ramsay: But you are.

Mr. Lupusella: No, I want to clarify the situation.

I understand that you are here because you showed a great

interest and an open mind to the hearings and also to the improvement of Bill 101. I got this message with your opening statement this morning, and I do not want to be reminded by you that your position is what it is. Considering what you have said, that you have someone summarizing the concerns that will be expressed throughout the hearing, I want that party to be told of the past pitches we made when the committee was sitting last year, otherwise we are going to have to make several pitches.

If you are going to summarize only the content of what is said from now on, forgetting our particular interests as expressed in previous hearings, surely I have to make pitches and you have to accept them. Either you go through the contents of the past hearings or else I will repeat what we have been saying.

Hon. Mr. Ramsay: Mr. Lupusella, you are twisting my words. What you are saying is not what I mean at all, with the greatest of respect.

Mr. Laughren: On a point of--

Mr. Chairman: On a point of what?

2:40 p.m.

Mr. Laughren: Point of view! I really think the minister should reconsider the words he used a few minutes ago when he referred to a "charade." Not only do I think it is unparliamentary to attribute motives such as that, but also I do not think the minister is implying that Mrs. Banks is engaging in a charade.

Hon. Mr. Ramsay: No, I am not.

Mr. Laughren: We are making the same pitch that Mrs. Banks is. It is not something new. It is not because we have suddenly discovered something that we think is catchy. We have been plugging away for a long time on improved survivor benefits. It is most unseemly of you to accuse us of engaging in a charade.

Mr. Chairman: With respect, the minister perhaps did not make a perfect choice of words, but I really feel the message is there that the purpose of his sitting in on as many of these--

Mr. Laughren: We choose our words very carefully.

Mr. Chairman: --hearings as he possibly can is to get first-hand information from all the witnesses. When we get into the clause-by-clause debate, that is the time for any amendments we could make and certainly for anything the ministry can hold in the background for phase 2 of these amendments to the Workers' Compensation Act.

Are there any further questions of Mrs. Banks from any members? If not, I would like to thank you, Mrs. Banks, for coming before us and expressing your concerns. I think all members are fully aware and you helped elaborate on the concerns.

Mrs. Banks: They are not just my ideas. Right from the

start, when I found out I could not go to court, I could not believe that a company could get away with something such as that, not in this country. Apparently they do. As I say, in Europe they do not and in the United States they do not. I do not see why in Canada they should be allowed to.

Mr. Chairman: Without getting into the history, and I do not pretend to know the total history, back in 1915 when the first Workers' Compensation Act was brought in, that was a tradeoff, if you will, that there would be no companies or employees taken to court.

Mrs. Banks: That is right.

Mr. Chairman: It was one of the decisions that was made at that time by those then in power in 1915 to eliminate court proceedings when it comes to settling workers' claims.

Mrs. Banks: I am sure it must have been the same in the United States and in Europe. Laws are changed. From 1915 till now is a long time for them to be still getting away with it.

Mr. Chairman: This, of course, is the purpose of these hearings and these amendments, to change and update some of the things. It has been well known by the ministry and by the board itself that it has been out of date for a long time. This is the first series of changes of this major proportion.

Mrs. Banks: Employers started to complain when they brought in Professor Weiler. He said right out that if they had to pay, they would clean up their act; they would see that this was not going on. Anybody who has to pay out of his pocket soon changes his tunes. If they keep getting cheap insurance, I do not see how you are going to clean up the act and safety.

Mr. Chairman: Thank you, Mrs. Banks, very much.

The second witness for this afternoon is the Council for Franco-Ontarian Affairs.

#### COUNCIL FOR FRANCO-ONTARIAN AFFAIRS

Mme Lalonde: M. le Président, M. le Ministre et membres du comité, j'aimerais tout d'abord vous présenter les membres du Conseil des Affaires franco-ontariennes qui sont avec moi. Nous avons à mon extrême gauche Mme Jacqueline Neatby; Mme Neatby est la vice-présidente du Conseil des Affaires franco-ontariennes et présidente du Comité de la Santé et des Affaires sociales. A ma droite est Mme Denise Nazaire, qui est la directrice.

Mr. Chairman, Mr. Minister, members of the committee, I hope you have the blue brief; as you can see, we have chosen the right colour.

Mr. Chairman: We noticed that. That is a point in your favour. It is exhibit 11, committee members.

Mrs. Lalonde: We will stick to the brief to make the



charades a little shorter.

It gives me great pleasure today to bring to this committee, on behalf of the Council for Franco-Ontarian Affairs, amendments to the Workers' Compensation Act. The effort and work invested by the Ministry of Labour has been enormous and most commendable. However, if the act really wants to be responsive to the needs of the people it serves, it should try to answer the legitimate needs and aspirations of Ontario's francophone population. I, therefore, submit to you on behalf of the council the following amendments.

First, let me remind you of the mandate of the Council for Franco-Ontarian Affairs. It was established in 1974 to advise the government of Ontario and all its ministries on any matter of concern to Franco-Ontarians with the exception of the field of education. It is composed of 15 appointed members from all walks of life and from all the regions of Ontario and it has a full-time chairperson.

Our concern is that the draft legislation, Bill 101, An Act to amend the Workers' Compensation Act, does not contain any reference which reflects the government's policy on French-language services.

We have made a few minor changes. We deleted the part which states "in a manner consonant with the government's policy on French-language services" and all of these things because we understand that in the legislation we do not usually refer to a policy that may change, so we have tried to articulate it in a way that would help you to legislate easily.

An article should be introduced in Bill 101 to ensure the provision of French-language services and such an article could read as follows: "All bodies established under this act shall, where appropriate, make services to claimants available in the French language."

This declaration of principle would be congruent with the government's policy on French-language services as defined in the document, Broad Implementation of Government Services in the French Language, January 27, 1981.

Page 5, a clause 2(b) should be added to read as follows: "Services to employers and to workers shall be made available in the French language where appropriate."

Page 17, subsection 56(1) to be amended as follows, and I will not read everything, but we have "a full-time chairman, full-time vice-chairman of administration and not less than five and not more than nine part-time members"--and we have added, "at least one of whom shall be French speaking"--"who shall be representative of employers, workers, professional persons and the public."

We do not exclude that francophones can also be chairman or vice-chairman, naturally. It could be that person who could be in that position.



Subsection 29(2), amending section 79 of the said act to read as follows: "Every decision of the board and the reasons therefor shall be communicated promptly in writing," and then we have inserted, "in the French language," and it continues, "to the parties of record where appropriate."

Section 32 of the bill, adding a subclause 86(b)(i) of the said act to read as follows: "The Lieutenant Governor in Council shall appoint a chairman of the appeals tribunal, one or more vice-chairman of the appeals tribunal and as many members of the appeals tribunal, equal in number representative employers and workers respectively as is considered appropriate."

We have inserted "at least two members of the appeals tribunal shall be French-speaking," and this includes, naturally, the chairman and the vice-chairman. It could be one or both.

Section 32 of the bill, adding clause 86(h) of the said act to be modified as follows: "The Lieutenant Governor in Council, after requesting and considering the views of representatives of employers, workers and physicians, shall appoint qualified medical practitioners, at least one of whom shall be French-speaking, other than practitioners appointed under subsection 72(1) or clause 86(b), to a list and the appeals tribunal may obtain the assistance of one or more of them in such a way and at such time or times as it thinks fit so as to better enable it to determine any matter of fact in question in any application, appeal or proceeding."

Page 27, section 32 of the bill, "The panel shall be composed of not more than nine members, including persons representative of the public and of the scientific community and technical and professional persons, at least three of whom shall be French speaking."

2:50 p.m.

Section 32 of the bill, adding subclause 86(p)(viii), to be amended as follows: "The panel may establish special panels to investigate matters arising out of its functions under subsection (6) and may appoint ad hoc members, at least one of whom shall be French speaking, who are specialists in particular diseases and industrial processes to such special panels which shall report thereon to the panel."

Section 32 of the bill, adding clause 86(p), to be amended as follows:

"The panel shall, after the close of each year, file with the Minister of Labour an annual report"--then we have added "in English and French upon the affairs. . ." And then the section continues.

The aforementioned amendments imply adequate French-speaking representation among adjudicators, administrators, workers' advisers, employers' advisers, medical consultants and advisers, and within the communications unit, claims services, rehabilitation centre, proposed office of the worker adviser.

As you can see, we have spoken much about the people who would be sitting on bodies such as the panel, the tribunal and so on, but we do think that when we speak about services to the claimants there are many places where it applies, for example in the support staff and where an examination is made of the claimant in connection with tests and a variety of inquiries and so on.

On the policy on French-language services, since the minister is here, I think he knows that policy because he has made it a point to try to apply it in his ministry. I do not think I will have to read it. He knows about it. I am optimistic that he will take our proposals today seriously. I know he will.

Our proposal is compatible with the Ontario government's present position. By proposing that the Workers' Compensation Amendment Act provide for the delivery of services in French, the Council for Franco-Ontarian Affairs is proceeding in a manner which is congruent with the Ontario government's position on this question.

The government has chosen the route of gradual implementation of French-language services and specific legislative amendments to improve services. The Workers' Compensation Amendment Act is a specific piece of legislation which will demonstrate once again the government's chosen way.

To conclude, the Council for Franco-Ontarian Affairs is confident that the minister and the Workers' Compensation Board will take all the necessary initiatives to ensure the inclusion of French-language services provisions as proposed. On June 19, 1984, the minister's commitment was clearly stated when he addressed the Legislative Assembly. He said:

"It is my intention to introduce an amendment to Bill 101 at the committee stage to make provision for French-language services at the WCB. The precise terms of the amendment will be determined shortly following the corporate board's consideration of the proposals of the internal review committee to which I referred."

We are at your disposal for any questions relating to this brief and to implementation regarding the amendments recommended.

Hon. Mr. Ramsay: In the last paragraph of your brief you have basically summed up what I was planning to say, but I want to reconfirm what I said in the Legislature by reading you a short paragraph I read this morning in my opening remarks.

"During second reading of Bill 101 on June 19, I indicated it was my intention to introduce an amendment to make provision for French-language services at the WCB. Work has proceeded on drafting the necessary legislative language and I hope to be in a position to make the proposed wording available to this committee very shortly."

So we are making progress; it will be discussed by this committee before the hearings adjourn.

Mr. Lupusella: The minister covered the concern I had, but I have a question. At the beginning you said you chose the colour very carefully. What is your position? Very conservative, far from being conservative or a truly conservative position?

Ms. Lalonde: I want to say to you it is a very conservative position regarding the desires of the francophones of Ontario with respect to bilingualism, but I will not enter into that today. I think it is also conservative because we have chosen a blue colour. It is my first brief to a committee. I think I have chosen the right colour, as I said, because I hope to be understood by the people who are in place to help us make the necessary amendments.

Mr. Lupusella: I hope the minister's position will cover your interest, but I would like to say with respect to bilingualism in Ontario that we would like to see it entrenched in the Constitution, so we are quite far away from being Conservative. I am a member of the New Democratic Party.

Mrs. Lalonde: I would also say to the member of this committee who was speaking a few minutes ago about doctors and physicians knowing what is going on here that physicians, associations and 97 unions in this province have received letters regarding your committee so that they will understand the importance of the committee. I hope that they will take it seriously and not only support us, but tell you whatever is needed to make Ontarians much more aware of the amendments to this act that are needed.

Mr. Laughren: I do not mind the colour being blue, but at least the print could have been pink. Was it an arbitrary decision as to the numbers that you used?

Mrs. Lalonde: We always say "at least" because I think it was a minimum, that when you have a committee it is at least one, two or three. It was arbitrary. I think it will be up to people in the office or people in a position to think about the legislation. We are not of the unions, we are not workers and we are not lawyers. I think we will leave it up to the people who are experts in it.

I think we have chosen a minimum number to have francophones represented. If you put more, we will gladly accept that. I think it is a minimum that is asked for in this brief; it is conservative in that way.

Mr. Laughren: Yes, it is. What struck me was that you used "at least two, at least one." Then when you get down to the panel which consists of not more than nine, you suggest at least three should be French-speaking. That was what sort of jarred. Why are you saying there should be third of the membership here and not in others?

Mrs. Lalonde: I will let the director answer that one.



Mrs. Nazaire: Mr. Chairman, when we inquired, we were told that the panel will probably work on guidelines and investigations mainly with subcommittees, and they would take several cases together. We thought that, because of that kind of organization, we could ask for three people because there would probably be an amalgamation of cases and because of the number of times they would have subcommittees. That is the difference.

Mr. Laughren: I represent a constituency that is almost 50 per cent francophone and I think you are making a conservative request. I think what you are requesting is reasonable, because we have had some difficulty in the past. It is a lot better than it used to be with respect to dealing with the French language through the board, but we need to have these things built into the act. I think you have made a positive contribution.

3 p.m.

Mrs. Neatby: Mr. Chairman, in support of this, I would like to add that we have concentrated on ensuring an adequate or a minimum of representatives on the main boards and panels. As you know, the global article or general article which says, "Service will be available to claimants," involves much more than representation on the formal boards and panels. It involves having some of the employees of the various bodies which are established under the act able to deal in French and having a lot of the support services available in French. There is the test, the examination by doctors.

There is a range implied in the general article. It is much more the law than this.

Mr. Laughren: I agree with you. That is one of the areas where the Sudbury office has done a much improved job in its French-language services. Where the board is still lacking, and I do not know whether your association would be interested in pursuing it or not, would be when it comes to the rehabilitation section of the board.

We have been through this many times, so I hesitate to bore the committee again. However, where there is the situation of a unilingual, French-speaking injured worker who is asked at the age of 55 to move from Chapleau to some other place to find employment, someone, for example, who has worked in the bush through virtually all his working life, I feel that is discrimination on the basis of language because that person is not flexible and cannot be expected to be flexible in his language at that point in his life. That is one area where the board needs improvement; it still asks too much of unilingual francophones.

Mr. Lupusella: I have a question on workers' advisers.

Mr. Chairman: Can I move to Mr. Riddell and then come back to you?

Mr. Lupusella: Yes.



Mr. Riddell: I was going to say, Mr. Chairman, that I think the blue colour is most appropriate. We in the opposition parties felt it was a very blue day when we saw the shortcomings in Bill 101. However, I can assure you there will be some red faces if the minister does not live up to his commitment on French-language services.

Mr. Chairman: I am sorry I recognized you.

Carry on, Mr. Lupusella.

Mr. Lupusella: Thank you, Mr. Chairman, I appreciate your editorial comment.

I have a question on workers' advisers and the kind of services people are receiving within the present system from workers' advisers.

As you are aware, workers' advisers are people who try to assist and help injured workers on the proceedings in connection with appeals and so on. How do you find the service within the present system?

Mrs. Lalonde: Actually, I had a case a few weeks ago in Vanier where a person with grade 3, from Alfred, Ontario, had all his documentation in English. I thought that to help him go through each step he had to go through, especially when it came to the point at which the decision of the tribunal was to be made final, it was very important that the worker be well directed in his or her own native language. I do not speak especially for the French here but for anyone of another language. I think you really need some assistance in this regard because the decision is so final.

It is of the utmost importance that the communications, the phone calls--everything Mrs. Neatby referred to--should be very well understood, even to the point where it may be necessary to have simultaneous translation. We have seen in the courts where a lack of such facilities may deprive a person of their very survival.

When it comes to something as very important as compensation, conceivably involving the money they are going to have to live on until they are 65 years of age, it is very important that the entire procedure is well understood.

There are certainly some improvements that can be made. I know there are certain efforts that have been made, but as with any other ministry or at the federal level, we do not want to criticize anyone in particular but we want to stress that it is essential we have those services for francophone Ontarians who are in situations to really need them.

Mr. Lupusella: I have a question for Mr. Cain on the accident report. It is a question as to whether or not people have a right to have correspondence in French or English or whatever. Within the present system, when a representative of the board communicates by letter with an injured workers who speaks only French, is the communication in French or just in English?

Mr. Cain: The policy today is that if for any reason we are given to understand the injured worker, employer, doctor or whomever wishes us to correspond with him in French, we will always respond in writing in French. If we do otherwise, we have made a mistake, because that is our policy.

Mrs. Lalonde: There is a lot of education that has to be done with the francophones. I do not blame them; when they think of the provincial government, they think they have to write in English. Even though they probably have difficulty, they do that. I saw a physician, who should know better, who also wrote a letter in English.

There is a lot of education that should be done, not only by francophone groups but also by this government. I know they are doing a lot on the services, on TV and everywhere, but there is education that should be done regarding the fact they can use their own language to go to the ministry.

Mr. Lupusella: Perhaps the minister could instruct the chairman of the board to send out a notice at the time when the accident report is filled out by the injured worker that if he wishes to have correspondence in French, the ministry has such a service available. That would be in line with the educational process which this deputation is talking about.

It is time a standard letter was sent out to people with the accident report. They would have to respond to a question about which language they speak. This would be at the beginning of the paperwork. If it is French, the board should write a general notice that if it is the only language, they have such a service available.

Hon. Mr. Ramsay: I was going to volunteer the information a little earlier, but I could not get the chairman's attention; he would not put me on the list. I was going to volunteer the information that was given by Mr. Cain in response to your question. I will get to the request you made. Perhaps I could go further.

This excellent brief did refer to the steps the ministry has made and adopted formally in 1983. This policy commits the ministry to offer services in French in certain designated areas and specified localities. That is being done in more than just the Ministry of Labour. That same policy is being carried through with our agencies, boards and commissions, including the WCB. They have already made steps in having people in each department who can converse and correspond in French and so on.

You asked me if I would instruct Mr. Alexander. I am not sure I will instruct him--I never have to instruct him--but I will ask him to give me a report on everything that is being done. I know there is a great deal of effort being put forward to promote--it is not a promotion campaign as such--the availability of French-language services. If there is any way that can be improved upon, I assure you we would want to do so.

Mr. Chairman: If there are no further questions, I want to thank the Delegation for coming before us and presenting their

The next witness is Mr. Robert C. Cronish. The exhibit is number 3 in our package.

Mr. Lupusella: Mr. Chairman, with respect to Mr. Cronish, can we get a commitment about the timing framework and how long he is willing to speak, so we do not go beyond 4:30?

Mr. Chairman: We sit until 4:30. The normal suggestion is that no delegation can speak more than about three quarters of an hour.

Mr. Lupusella: We should make our position clear, that we do not plan to go after--

3:10 p.m.

Mr. Chairman: We do have one item of business I want to discuss before 4:30; so instead of the normal three quarters of an hour, we can extend this to about an hour for Mr. Cronish if he feels he needs that much time.

Mr. Lupusella: With respect to Mr. Cronish, I hope I am going to get your indulgence by raising this point.

Mr. Chairman, before the official presentation will be made, may I get your permission to raise a question with Mr. Cronish?

Mr. Chairman: Are you going to give him the answer or the question?

Mr. Lupusella: No, just a question which will be actually a clarification of his own position in relation to the changes which eventually will take place.

I know, Mr. Cronish, that you are postponing appeals indefinitely--I am making particular reference to appeal board hearings--until the new law is enacted by this Legislature because I think you are of the opinion that you want to test the new independent tribunal system which will be implemented as a result of Bill 101.

Am I supposed to assume that you are losing faith in the structure of the present system and therefore you are trying to postpone the hearings to find out how the new system is working? You may have some other reasons of which I am not aware.

Mr. Cronish: Mr. Chairman, do you wish me to address that matter? I wish not to. I think it is an improper question, with respect.

Mr. Chairman: It is probably an unfair question at this time. I would think Mr. Lupusella, this early in your presentation, might be slightly facetious.

Mr. Lupusella: Let us take it as an editorial comment then, if he does not want to--

Interjection.



Mr. Lupusella: No, it was a real question.

Mr. Chairman: It was a real question, all right. Mr. Cronish, perhaps you would like to proceed now.

ROBERT C. CRONISH

Mr. Cronish: Mr. Chairman, Minister, members of this committee, today I have with me Peter Winstanley of Budd Canada Inc. Budd Canada has filed a submission which is included in the brief material filed before you. Elizabeth Balogh is of my office and helped to prepare this material.

The matters before you are set out in a written brief. The brief deals with a number of factors that arise out of Bill 101. First, there is the intention as expressed by the bill to delete sections 21 and 22 from the proposed Workers' Compensation Act.

This would be substantially detrimental to the adjudication of a workperson's claim, because one would not have the objectivity to determine whether a causal relationship between the incident and the disability existed.

This test for the award of compensation benefits is not exclusive to Ontario. It is common to all provinces of Canada and to all states of the United States. It is also common to the Federal Republic of Germany.

You have a very significant problem when you take away from the employer the right to an independent medical examination. As currently stated, the act provides for the right for such an examination and the board has recently enacted regulations to compel workpeople to be so examined. In failure of being examined, the board has suspended the payment of compensation benefits.

The act as currently constituted states: "An employee who claims compensation or to whom compensation is payable under this act shall, if so required by his employer, submit himself for examination by a legally qualified medical practitioner provided and paid for by the employer and shall, if so required by the board, submit himself for examination."

The board's present policy is that the physician, under section 53 of the act, causes a medical report to be filed with the board. It is not filed with the employer. If there is to be a triable issue in a hearing, then that report is subsequently issued as part of the board package or document of information.

The attempt to restrict the right to such examination would prevent knowing by the employer sector whether the worker is able to do any work whatsoever. Can he do light duties? Can he do alternative work? If the physician cannot communicate the nature of the restriction immediately to the employer, you have a prolongation of claim and this board expending benefits beyond a reasonable point in time.

The directed medical examination was commented upon in our Court of Appeal in the Welland-Forge case, and the Court of



Appeal expressed the view that there was the right to a mandatory examination by the employer where the worker has claimed a benefit.

It should be noted in your deliberations that it is very important that you must be able to measure the disability. If compensation is not unemployment insurance, and if compensation is designed to provide support for a worker who is injured in the course of his duties for his employer, you must be able to put a ceiling on the point in time when the workperson will return to gainful employment; otherwise, with a benefit structure as high as it is under Bill 99, which is now law, you will have undue consequences happening with workpeople who abuse the program, specifically in terms where there is layoff in industry or where there is unemployment resulting from plant shutdown caused by failure to compete in the world economy. You have a substantial problem that is being overlooked.

The crisis one faces is that if you cannot determine objectively what is the true disablement, independent of the board hierarchy, then you do not have any control factors that will result in a return to work on a timely basis.

The board has an unfunded liability today in excess of \$3 billion. I know the Wyatt Company was retained to provide to your ministry some input. I do not think there is a dispute that the unfunded liability increased by in excess of \$1.5 billion in the years 1982 and 1983 as a consequence of a downturn in the economy starting in 1981.

The period of claim has become unduly prolonged, and because of that prolongation Ontario now has an average length of claim of some 10 weeks. Other jurisdictions--for example, other provinces of Canada where there has been equally high layoffs resulting from the downturn in the economy--do not even exceed an average 10-week period of time for which workers receive benefits.

Federal Department of Labour statistics confirm the Ontario duration of claim; they also confirm that Ontario has the lowest frequency of injury of any province in Canada.

You are mixing apples and oranges if you refuse to consider the relevant factors that give rise to disablement. Mere injury in itself is not necessarily disablement. There are injuries known as soft-tissue injuries; these heal within a period of days or weeks. There are injuries that are fractures and they heal in a longer period of time. Both classes of injuries may not give rise to permanent disability in any event, but if you do not know the nature of the injury you cannot assist the workperson in his rehabilitation; you cannot assist the workperson in returning to gainful employment and being a wage earner within our society.

3:20 p.m.

The statistics, unfortunately, indicate that if you take away the right to an independent medical examination, you may have the length of layoff doubled to 16 to 18 weeks. That consequence in unfunded liability may cause that fund to double itself to \$6 billion. The interest cost alone could not be borne by the Ontario

economy as it is today. You have a very real and significant problem to consider.

We have a further area of conflict that has arisen in the last four to five years. As compensation benefits have increased, the number of claims for compensation have also increased. One of the problems associated with workers' compensation is the allowance by the workperson to be treated by his own family physician.

Ontario has not implemented controls, as have other jurisdictions. The fact that the Legislature--and, in fact, Minister, your ministry--is now considering an independent medical tribunal means it passively acknowledges that the Workers' Compensation Board has been unable to meet the real challenges of most claims, being what is the real disability arising out of the work or the activity.

Until you can meet that challenge, then one does not know whether the layoff is due to the fact that a person has nonoccupational problems, or if they are occupational problems, what are they and what treatment is required.

The board today is being subjected to more claims for post-traumatic neurosis compensation benefits or psychiatric disability benefits than ever before in its history. The reason for this is that the doctors cannot find the cause of the workperson's complaints. It is a very tragic occurrence that because there is money on the table, claims of this kind are being made and are causing a burden upon our society, which is unjust.

You have the problem with the family physician treating the worker as if he is going to allow every benefit to the worker that he possibly can to keep him as a patient. There is a subjective interest in the family physicians treating the worker. Again the compensation board has statistics on those doctors in Metropolitan Toronto who represent a disproportionate number of injured workers because these doctors are what the board has termed co-operating in terms of maintaining the disability, whereas when the board causes independent examinations to be made or the employer has directed independent examinations to be made, the worker's benefits cease because it is found there is no true disability arising in the course of the worker's employment.

Moreover, there is a failure of the adjudication branch of the board to properly follow guidelines with respect to causality. There are several published statistics dealing with the "arising out of" and "in the course of employment" sector. Mr. Reed, a former board solicitor, has written extensively on the area. A former board chairman, Mr. Legge, has published writings in the Law Society of Upper Canada summaries in 1971, dealing with the causal factor. A former secretary, Mr. Hardy, has published position papers on behalf of the board.

All those seem to be ignored when it comes down to the "arising out of" and "in the course of employment" sector. The board's adjudication branch in Toronto, which is headed by Mr. Van Olieaf, fails to consider that there must be some relationship

between the worker's activity and the disability. Again, the family physician seems to reinforce the claim to pay the worker benefits because he is an injured worker regardless of whether or not the occurrence arose in the work place or whether it was on the worker's holiday, in his home or elsewhere.

Second, we also have the problem that the founders of our act were concerned whether the Workers' Compensation Board should permit an open field with respect to allowance of members of the medical profession to treat injuries arising out the employment. It was stated as early as 1912, when Mr. Justice Meredith stated: "I regret to say that this open policy has not been entirely successful. Some members of the profession apparently do not realize the duties of their position... multiplication of attendance... fraudulent practices by some unscrupulous members occur." As early as that time, it was recognized that having a family physician treat an injured worker was not the best choice.

In 1932, the then chairman of the board stated that the pressure and importunity that is directed against the board in cases of malingering and other cases which it is felt can honestly be paid is the most serious difficulty in the administration of the act.

You do not hear of the word "malingering" today; it is not a well-thought-of word, but it does in fact occur. You hear instead the terms "compensation-gain neurosis, post-traumatic neurosis or the counterfeiting of illness."

Today, it is very hard to convince certain members of our society that compensation is a matter of right and not a matter of charity, that it cannot be granted as a favour for motives of expediency. Today, our Worker's Compensation Board still has a problem with respect to medical treatment that has existed for more than 70 years, but today the board is accountable only unto itself and the necessity to change provisions with respect to the allowance of medical practitioners to treat workmen has not changed within that time.

What is suggested is that for most employers in Ontario there is the cost for the Ontario health insurance plan which is borne as part of the collective agreement or part of the employment package and there is also the board's medical aid cost. I submit it is really a left pocket, right pocket rule for the compensation board, but it does predicate an unjust cost burden upon the employers. They wind up paying twice for the cost of medical coverage, where the board shows a medical aid charge. Having paid for the worker's OHIP, the board will then subsequently reassess an employer who has an unjust cost record through its experience rating plan or penalty assessment provisions so the employer winds up paying twice for the cost of medical aid whereas he is already paying for the cost of the OHIP provision.

Other jurisdictions have elected to appoint physicians to treat injured workers and such physicians must account to their compensation authority rather than to the worker. You have the examples in both the Federal Republic of West Germany and the



state of New York where the boards have gone out of their way to cause physicians to be appointed by the board and those physicians cannot treat the worker.

There have been extensive dealings between the Ontario board and the New York state board in this area. There have been position papers that have been delivered and received and I would urge your ministry to reconsider the New York experience. To assist, there have been draft provisions from page 6 onwards, dealing with what should be done to assist the objectivity of medical treatment and to correct the deficiency with respect to the levers that are being applied to obtain benefits.

Mr. Justice Roach of our Court of Appeal, in his report to your ministry in 1950, stated that the Legislature should not make compensation act as a convenient dumping ground for legislation which is in substance social and not compensatory. He goes on to distinguish what is an injured employee as against what is a claimant.

By establishing board-appointed physicians having special skills, the board will achieve substantial reduction in the time loss of occurrence through injury by having more effective control of the treatment; the board will establish reduced cost in medical aid; the board will establish and facilitate provision of proper records in terms of the disability and, moreover, will have up-to-date reports to monitor recovery and return to work and, as well, will serve the most important need, the proper treatment of the injured worker.

That should be the first and foremost goal of the compensation board with respect to its omnibus mandate in dealing with the injured workers of Ontario to obtain nothing but the very best. General practitioners, unfortunately, do not have the same skills, knowledge and ability specialists have.

You are faced with a problem that as long as a family doctor continues to treat the injured worker, you will have undue abuse, you will have misdiagnosis and you will have problems that are not becoming of this government.

It is submitted from page 8 onwards how you can cause sufficient changes, the benefits of those changes, the objective analysis that will result, the role the Ontario College of Physicians and Surgeons can play in Ontario and, as well, the means of having control over treating physicians.

3:30 p.m.

All of those things are lacking today. The board has no control over treating physicians because the return process is far too slow. Where the worker wants to take advantage of a system, he can be off work for a substantial period before the board twigs to the fact that the claim is now 19 months' old. Usually, it is at the request of the employer asking why the work person has not returned to gainful employment, having picked up an object weighing five or 10 pounds in the work place and complaining he has incurred a low back injury, which is nothing more than a soft



tissue or muscle strain and which would not be disabling on its own account for a period of hours, days or, in some cases, weeks.

We have as well the problem that objective medical evidence is lacking today. Under the provisions of your proposals, specifically those dealing with the restraint on medical information set forth in section 77 of the proposed act, the board will limit even more the employer's right of access to this information.

As a comparative guide and to assist the Legislature and your ministry, I have set out certain extracts from other jurisdictions, pertaining preferably to California, which is a leader in workers' compensation in America, and also to other provinces.

For example, you will note the type of medical evidence required by the California board from its treating doctors; it is set out on page 14(a); the type of medical examination, at the request of either the employer or employee, is set out on page 14(b); the type of information to be included in special examinations is set out on page 14(c).

You will note that California demands a diagnosis. Our board asks the doctor what treatment has occurred when you look at the doctor's first report, but it does not demand a diagnosis; whatever the doctor seems to write is satisfactory for the cheque to be issued, and I think that is wrong. I think some inquiries should be made by your ministry about the real diagnosis that is taking place in these matters. California is very particular in what it demands before the benefit will be issued.

In other provinces, particularly Nova Scotia, Manitoba and Alberta, there are requirements for the worker to submit himself for examination by the employer. I have merely given you extracts.

Significantly, Quebec's new act, which has just been translated into English, has probably the most reciprocal obligations between worker and employer in Canada. I have set out portions of that act for you because perhaps at the time Bill 101 was drafted it was not available to your ministry. It should be considered, because there is clearly the right of the employer and/or employee to have examinations, there is the right to have re-examination and there is the right to ask certain questions and have certain things done that are far more extensive than the limited provisions contained in Bill 101.

Again, they are set forth and I ask that they be considered. As I understand it, they will be implemented in law in Quebec in a very short time, having been through the public reading stage.

When we look at the question of diagnosis, again Quebec follows the California experience. It demands to know the diagnosis from the treating physician; it demands to know the nature and duration of the treatments; it also demands to know the foreseeable time the employment injury will take to heal.

We have forms, and these forms obviously have wording

similar to the contents, but they do not have the exact wording. Again, our board does not follow up on a timely basis. For all the money this board has spent on computers, it is lacking in follow-up procedures for reasons that are not quite clear. There is a technology today; the board uses it in part now in responding to claimants. I myself have been the beneficiary of several tractor-driven letters in the last six months.

It is obviously there and it can be implemented, but it is not being used for follow-up for treating workers' injuries; it just seems to be lacking. You have the hardware, and there is no appropriate software in place to follow through. It just does not seem to be good judgement.

When we come to the interpretation of the present act, this whole exercise of wishing to restrict the employer's right to medical information is an abuse of process, I submit to you. We have rules under our Judicature Act dealing with civil proceedings and we have rules under the Workers' Compensation Act that interpret that the compensation board is a court of civil record.

A court of civil record, under the laws of the province in 1871, was interpreted to mean a body that had both powers of a court of chancery, which is a court of equity, as well as a court of common law. Therefore, the right to compel production and issue subpoenas was within the board's jurisdiction, and it still is today. Production is the production of medical or any other document the board may demand or require in the course of its fact-finding process.

To assist this committee, I have set out the rule of physical examination under the Judicature Act, which is section 78. That deals with both physical and mental examination by a physician. In a civil action, medical records are admissible in evidence with leave of a court. Section 52 of the Evidence Act confirms this procedure, but medical records are not always privileged.

There is a case in Ontario that deals with this matter. It was a case that followed a previous Court of Appeal decision. If you take the basis that the Workers' Compensation Act is no-fault legislation, and take the position that the workperson is equivalent to a plaintiff or claimant in a civil matter, in that case, "the no-fault insurer of the plaintiff"--or worker if we choose to use that word--"was ordered to produce to the defendant"--in this case the employer--"a copy of the medical report prepared for its case, and which had not been given to the plaintiff."

It is board practice not to give any report to the worker whatsoever unless and until a hearing is to be convened, and then under the policy enacted by the present chairman, Mr. Alexander--probably one of the most visible policies he has enacted is full disclosure; let both parties know the case.

The rule of full disclosure has been upheld by this Legislature in the last several years in every other area of legislation. Disclosure has become the keynote of this government.

For some reason, the policies of Mr. Alexander now have somehow been twisted, because a caveat has been inserted in section 77 which states, "Where there is an issue in dispute...the board shall grant the employer access..." only if the worker does not object.

We will look at subsections 3, 4 and 5. This matter of the objection now becomes paramount in refusing the employer access to the medical information which is the very information the worker claims establishes his disablement. If it establishes his disablement, then you lose out on the test of proving that he is entitled to a benefit, because disablement arising out of and in the course of employment is the test this Legislature has imposed under the existing act and under the contemplated act. You cannot deny the employer full access and deem yourself to be fair and impartial in the course of the hearing process.

To attempt to restrict access by the employer to the medical information is a denial of natural justice. The payment of ongoing benefits should be based upon real disability. Without the test of independent evaluation of that disability, one cannot determine whether a real disability exists or otherwise and whether it is compensable.

If you accept that the person must injure himself arising out of the work, and if the workperson completes a Form 8 outlining the events that took place, then by so applying for benefits the worker attorns to the jurisdiction of the board. If the workperson attorns and requests payments, there should be no question that this information is privileged. It should become subject to the public domain as a Form 7 report is subject to the public domain.

The principle that is appropriate is the old equitable principle that, "He who comes into equity must come with clean hands." If the work person is legitimate in his claim, then he should have no fear whatsoever of disclosing the real nature or case of what he has incurred in the treatment of his disability, the medical aspects of the rehabilitation and so on.

3:40 p.m.

Without production of the evidence of disability there is both the denial to the employer group of its rights and frustration of the board's own rehabilitation process. Subclause 40(2)(b)(ii) is predicated upon the ability of the work person to return to work. The question therefore becomes how the employer determines the work person is available for employment, apart from told, without recourse to the test of a third party confirmation?

The second aspect of the clause is also subject to misapplication, as it states that it must be in the opinion of the board. The way the board inspects the work place determines the specific job, both by description and observation. This aspect can be set forth in a procedures manual with appropriate checks and balances. The key will be the board's intention or otherwise to cause benefits to cease where the work person does not avail himself or herself of employment.



As a consequence of subsections 5 and 6, therefore, the rights of the employer will be frustrated so long as the work person has the right to object to production of medical information.

It is submitted that the Workers' Compensation Board is a trustee for the employers' contributions in the administration of benefits to a work person. Since the act is no-fault legislation, the principles of Dwyer and Chu referred to in this brief should apply to the production of all medical information. Should the work person choose to claim benefits at law, the work person has accepted the board's jurisdiction to administer the claim.

It is my opinion that the work person in such event has subrogated whatever rights may exist either at law or in equity to the board, which has the legislative authority to administer the act; therefore, to give a work person the right to now object is contrary to the rules of production and evidence if this were to be a civil action. By the work person's tacit consent to receive benefits, the work person has waived any privilege which may attach to the medical information vis-à-vis the employer.

The board in fact may be in breach of the Charter of Rights in denying access to the employer of medical information at the time the matter is go to hearing. For example, under the Workers' Compensation Board's second injury and enhancement fund policy, how can an employer determine whether a pre-existing condition exists without disclosure of the medical information relevant to the work person's claim?

A further consequence of subsections 5 and 6 would be to frustrate the appeal process by having to "show cause" why reports should be released. A time factor is now being introduced, for the first time, that will substantially delay the appeal process and will cause the costs associated with hearings to rise without just cause.

Also, where an appeal is commenced for the production of records, further delay results because of the necessity to appear and argue before the appeal board the reasons for production or nonproduction. This causes delay, additional costs and frustrations. Ontario would be the only jurisdiction in North America with such medieval and Star Chamber practices as to withhold proof of disability or to shelter the fraudulent claimant. As unemployment increases, the alternative of workers' compensation payments is too tempting for a work person to refuse because of the high benefit level of support as compared to unemployment insurance benefits or welfare benefits.

I referred earlier to the Labour Canada statistics that indicate in our province work days lost per disabling injury are higher in Ontario than any other province, notwithstanding that Ontario has one of the lowest accident frequencies in all of Canada. Workers' Compensation Board statistics support this statement without qualification.

It is assumed that all post-hearing evidence as contemplated by subsection 86h(7) of the proposed act will be made available to



all parties without restriction. The act does not say so. In such event, will the employer or employee be able to request a second examination if the results are adverse in interest to that of the appellant?

The question of cost impact of the new act is paramount to industry. Quebec has fixed 150 per cent of the average industrial wage as the ceiling factor, a recommendation which the Wyatt Co. has concurred in for Ontario.

Hon. Mr. Ramsay: Excuse me; it is 150 per cent.

Mr. Cronish: One hundred and fifty per cent.

Hon. Mr. Ramsay: Yes. I just wanted the record to show the right figure. I believe you said 100 per cent. At least that is the way I heard it. It is 150 per cent.

Mr. Cronish: Yes.

Statistics Canada has revised its basis for calculation, resulting in fact in an eight per cent net decrease in what was the former average industrial wage calculation.

With the ceiling for pension rising to \$31,500, is it the intention of this committee to request a similar rise in the assessible wage level from \$26,800, being the current ceiling base for assessment, to \$31,500, in effect almost a 20 per cent increase in ceiling, plus the forthcoming adjustments to individual rate groups as announced already by the Workers' Compensation Board representatives for 1985?

Since our economy cannot support such a gratuitous increase in the costs of coverage, one must weigh carefully this decision. By driving industry out of Ontario and by causing Ontario to lose the ability to compete in the world marketplace, this will substantially impact upon employment. Of course, the Workers' Compensation Board could only pay out benefits for "just claims" and, by strict interpretation of "disablement arising out of employment," reduce its cost expenditures significantly.

I have been requested to file on behalf of the Mechanical Contractors Association of Toronto a written submission, which forms part of this material. It sets out the specific concerns this association has. It is a major employer in Ontario with more than 3,500 workpeople in its employ. I shall comment to you upon certain points raised by this association.

I submit to you, as do those in support of this material, that Bill 101 requires further amendment. Consideration should be given by this committee to the impact upon the Ontario economy of the negative attitude towards the employer sector this draft act represents. Obviously, both the Mechanical Contractors Association of Toronto and I concur that a restatement of certain clauses is in order to cure the deficiencies in the face of this draft legislation.

In addition to that association, other associations of employers, and employers such as Budd Canada Inc., represented here today by Mr. Peter Winstanley, have supported this submission. Budd employs some 1,500 workpeople and is located in Kitchener, Ontario, which I am sure is an area very close to your jurisdiction, Mr. Chairman.

Mr. Chairman: It is. A number of people from my jurisdiction work there.

Mr. Cronish: The problems and the consequences this act in its present draft propose for this employer are substantial. Full particulars will be provided to the secretary with respect to those who further support this material.

Budd's position is that section 21 of the current act should be maintained. There is a very succinct brief note put to you by Mr. Boehmer, the employee relations manager for this employer, dealing with section 21 and confirming that there must be a causal relationship between the work or activity and the disability. This is the hallmark test we must face and it seems to be ignored by the compensation board in its adjudication at the primary level.

In addition, where the workperson fails to co-operate, there should be no further benefits paid. As well, the employer should be notified that there is no co-operation by the workperson in terms of the rehabilitation factors the board strives to present to the public. Moreover, under section 79, this employer too is concerned that there should be full access. That, at law, is just.

The mechanical contractors association have an expanded brief in which they have considered further matters. As a major employer, the wages they pay contribute substantially to the benefit of Ontario. They have concerns about the corporate board structure proposed in the new legislation. They feel the majority of the board of directors of the Workers' Compensation Board should be members from the employer sector. The employers fund this board and it is a trustee for the employers of Ontario. The province does not fund workers' compensation.

There was discussion at a prior committee meeting that perhaps the Ontario government in its wisdom would fund a portion of the WCB deficit. The Treasurer (Mr. Grossman) made the point very clearly and succinctly that it was the employers' obligation. If the employers have all the obligation, they should also have the responsibility to administer this board. It is submitted by the mechanical contractors that the majority of board directors be appointed from industry. If it is our dollars that are being spent, we should have a say in how those dollars are being spent. It should not be left to third parties who have no interest in the welfare of the economy of this province.

Moreover, the earnings ceiling should be fixed at \$31,500; in fact, the recommendation of a fair and equitable ceiling for wage assessment should be \$28,200. It should be noted that the board actuary has recommended in many industries forming different rate groups that perhaps a 15 per cent ceiling per year would be a reasonable increase in terms of the cost of benefits.

3:50 p.m.

If we believe with the ministry represented by the Honourable Mr. Grossman that we should have no more than a four per cent increase in the cost of things, then why should compensation increase more than the recommendations made by your honourable colleague, sir? It seems unfortunate that we have a runaway cost cycle for two reasons: the board has overspent its mandate or injuries are being recognized that do not arise other than in the course of employment.

We are using principles for which this act was not designed to fund the layoff or loss of job. Clearly, executive action seems to be required. The mechanical contractors confirm that there should be examination by a physician of the employer's choice. I have touched on that point today.

They further talk about the question of whether the pension and other child benefits should cease on remarriage of the spouse. One must look to the Family Law Reform Act for the question of when a child is entitled to support. Perhaps we should be looking at whether the child is in an educational facility that requires support. Should support be to age 14? What happens when there is remarriage and there is a second wage earner? What happens when there is cohabitation beyond a period of five years between parties who are not spouses?

We have not examined, with respect, the latitude that this provision encompasses. You must have some litigation experience to appreciate the problems you have inserted here, or the problems that are caused by what is inserted for the payment of benefits of this kind, without considering the remarriage option.

With respect to pensions, you also have to look at the factor of a person becoming of age 65. At age 65 one is entitled to a lesser lifestyle in accordance with our traditions in our society than is expressed in this act. There is no other government or private fund that provides for a continuing pension at full benefits after age 65. Perhaps some actuarial advice to this committee from the Wyatt Co. would be of assistance. It is most unusual that this draft bill is the only piece of legislation of its kind in all of Canada that provides this benefit level.

The question of an older workers supplement does not reflect an age at which the supplement should begin to be paid. There should be an age and a determination of this age and a determination of the benefit. Further actuarial input will help round off the rough edges. The intention is very bona fide to assist in an older worker's supplement, but one must consider whether the disability arose out of his work or is a consequence of wear and tear which would have resulted in any event. That is a very distinguishing characteristic that has not been commented on by the draftsmen of Bill 101.

On the question of the one-day waiting period, it is not acceptable to the Mechanical Contractors Association of Toronto. It is not acceptable to Budd Canada Inc. The view is that the one-day waiting period should be retained. The problem you will



have is that there will be a significant increase in claim frequency and we will be back again in three years telling you that we told you so. That is most unfortunate. Very few jurisdictions have the concept of pay on the first day of the claim. It is interesting enough that some employers do pay gratuitously to the worker when he reports injury, but it should be at the employer's discretion. It should not be a mandatory matter.

With respect to the medical tribunal and the question whether it is appointed by the Lieutenant Governor in Council, I think the point of the Mechanical Contractors Association of Toronto is well taken. It should be the College of Physicians and Surgeons of Ontario that compiles the list. It is the college that has the skill, knowledge and ability of the leading experts within the professions, whether it be an orthopaedic surgeon, a psychiatrist or whatever. The physicians recommended by the college would obviously be the most highly qualified to deal with the matter.

I refer you to the New York state experience which is what your ministry appears to be going to. You want the help of those who know how to deal with the problem. This is the start of a very progressive movement you have brought into being. Have the college do the recommendation. The Lieutenant Governor in Council has no knowledge of a physician's skill, knowledge or ability and must take advice.

Bill 101 with respect to the restriction of access, as has been commented, is most improper. As to the question of benefits to be paid on 90 per cent of net, the recommendation is 85 per cent of net and a request for amendment is set forth.

There is also the question of the workers' earnings. Of course, we have the question of what are average earnings and what are overtime earnings. You must consider only average earnings and not overtime earnings. Overtime earnings are the result of special circumstances, such as the necessity to complete a job on schedule, problems resulting from a strike or problems resulting from a lack of supply of material. Again, overtime causes the wage base to become prohibitive.

The industrial disease panel, as long as there is employer participation, is a very valid proposal, one your ministry is to be commended for, to try to resolve the difficulty that exists at present.

With respect to section 45, the request is made to amend the legislation so the spousal payment is made only in the case of death that is a result of injury on the job. That is your true test: does it arise out of or in the course of employment. The fact that a workperson has died of cancer, for example, having sustained a broken vertebra is not related to the worker activity.

We get into the question of the board's indisputable rating of pensions. There is another issue that nothing is indisputable, and perhaps the ministry should issue guidelines on what is job-related for the death benefit and what is not job-related,



because the board today really does not know. Guidelines are made that are broken constantly, and without the scrutiny of an outside board of directors the ministry will not have access to the truth of the matter.

Those are the submissions made to this committee. I thank my friend on the right for not interrupting today. I would be happy to entertain any questions, if you wish.

Hon. Mr. Ramsay: Mr. Chairman, when I conclude my tenure as a parliamentarian I am going to look back and say that the item that caused me the most distress was the Workers' Compensation Act. I am sure there is nothing that can come up in the years to come during which I hope to be around here that would cause me any more distress than this particular act.

I am distressed from the point of view of trying to balance the needs of the workers--the obvious needs of the workers in many cases--with the cost to the employer through very difficult times when we are trying to keep plants open and encourage employment rather than discourage it.

I do not want to be provocative. I hope your brief was not intended to suggest that we looked only at one side of the coin, the need of the workers, and that we did not look at the costs involved, because we did a lot of agonizing over both sides of the coin. The finished product is being criticized in one sense for not going far enough and in the other sense for going too far. We anticipated that and we are ready and willing to defend it on that basis wherever the criticism may come from.

I do not want to be provocative, but I would like to ask this question because I really want to hear some advice from a person as experienced as you. You referred to 15 per cent, which has been suggested as the increase that would be required in assessment rates for the next few years to address the unfunded liability. You compared it to the four per cent that the Treasurer (Mr. Grossman) is using as a guideline for other expenditures, such as wages, government expenditures and so on.

What you say is quite correct. But how am I as the minister responsible supposed to deal with the workers' compensation unfunded liability with a four per cent increase in assessment rates?

4 p.m.

Mr. Cronish: With respect, sir, if we assume the board spent \$700 million in 1982, the board will spend \$900 million in 1983 and over \$1 billion in 1984 on benefits, your key problem is that the claims have become unduly prolonged. If the benefit level, through proper administration both from a claims point of view and from a medical point of view, were proper, you would recoup 20 per cent of your expenditure by not spending it. There would be more than adequate funds to reduce the unfunded liability over a 30-year program to zero.

The problem is the board is out of control in paying benefits. The test of disablement in Ontario is so convoluted compared to other jurisdictions that it becomes, unfortunately, abused.

I know that government does not want to hear that a system such as this is becoming abused, but in fact it is. I can put before you 1,000 cases of abuse if you wish documentation. You have seen writings from my office. You know I am not joking when I say to you there are problems in the administration of the act.

The key problem starts by having the worker go to his family doctor and having a ticket written to "take off two weeks and then come back and see me." They can punch the ticket for ever more until someone says something is wrong. The hierarchy of the board is not concerned with the prolongation of the claim. It just does not seem to be, to my reasoning from letters I have. There are concerned elements at the board. The chairman is very concerned.

There are problems we must face. It seems that compensation is being used as an offset to unemployment insurance, for example. You indicated, and it is true, we have had a difficult economy. We may be heading for a far more difficult economy in the next three years. The problem is that compensation is not a scheme other than to assist injured workers in the course of their rehabilitation. It has become far more than that. The problems that beset your ministry are great because the initial concept has been lost sight of. We are really dealing with a program to assist an injured worker in the course of his rehabilitation to make sure he has a cash benefit to sustain him through this period of rehabilitation.

I have cases that are five and a half years of total temporary disability for nothing more than picking up two pounds. The board has to have some responsibility in their dealing with the public and the employer sector in this way. If they will not have responsibility on their own account, then I submit that your ministry has an obligation to the employees of Ontario to see that proper controls are put into place. I think it is only fair to put it to you in that blunt way. I am not trying to be provocative, but the system is out of control in terms of the benefit that is paid.

I am sure there are injured workers here who are cut off by this system and who are entitled to far more than they actually receive. I just say to you from a case of simple events the slip, twist, strain, the soft tissue injury, the low back claim, the shoulder claim, the knee problem are out of control because the doctors do not really come to terms with the real issue of what is a disability as against what is the need in society. It is a very real problem.

If we talk of disablement, we must talk of only injury arising out of the work. Ontario should be no different than any other jurisdiction in North America, including Quebec. Quebec has very stringent tests. Their medical controls are far greater than we have in Ontario. Their economy is far worse than Ontario's, but they recognize that compensation is not a scheme. They realize it is a just benefit for an injured worker and only for an injured worker. It is not a prolongation situation. We have a problem

We also fund something called second injury to give the employer relief where there is an aggravation of a pre-existing condition. If you look at the statistics from the National Compensation Commission on Insurance Ratemaking, which is situated in New York City, you will see that our rates or our portion of assessment for second injury funding is half of what it should be. That may be a political decision.

It may be for reasons I do not have knowledge of, but in America, for example, they pay 27 cents on the dollar for second injury funding. In Ontario it is only 15 cents. Is the board's attempt to restrict medical information an attempt to defuse the second injury fund totally and pass all the costs on to the employer and, therefore, raise more money by way of a fine or penalty under section 91 of the present act or the new experience CAD 7 proposal which has a frequency modifier, both cost and frequency, regardless of whether it is a two-day claim or a 200-day claim?

We have real problems that arise out of this that are unanswered by the new legislation. There has to be more hands-on control by the ministry as to what is happening. It just does not seem to be reality in terms of the approach being taken.

Hon. Mr. Ramsay: You are putting the responsibility for this out-of-control circumstance you have described, which I am not necessarily agreeing with, into the hands of the ministry, meaning the minister. Is that what you are saying?

Mr. Cronish: It should be the ministry's responsibility if the compensation board is within your jurisdiction. If it were within Treasury's jurisdiction, it should be Treasury's responsibility. But there has to be some greater involvement in terms of checks and balances. We are lacking in checks and balances in the system today; that is why we have an unfunded liability of more than \$3 billion.

Obviously compensation is your personal concern. I realize that. You are highly motivated and well-meaning to find a balanced solution. I have full faith that you are doing everything in your power to reconcile the opposing forces that you face, but the problem we have is that we miss out on the base level of understanding. We miss out that other jurisdictions do not have this conflict between government and administration. Government has issued policies that contain checks and balances and controls, and we seem to be lacking that.

Your predecessors were not motivated in that way, and the system has just grown out of control for that reason. We are coming along after the fact and saying: "We are trying to measure where we are at." The measurement means more money, because the system is used to spending money. If you have proper physicians treating the workpeople and if you have proper controls for what is called "arising out of," the moneys that are being paid at the level today will cure your unfunded liability.

Hon. Mr. Ramsay: Mr. Chairman, I did have some other questions I wanted to ask, but in view of the length of that



answer and the fact that the members of the committee would like to ask some questions, I will pass on the others.

Mr. Chairman: I do have two further questions, at the moment anyway; one is from Mr. Laughren and one from Mr. Lupusella. I would ask them to try to be as brief as possible because we would like to wrap up by 4:30 p.m. and we do have one other item of business to discuss.

Mr. Laughren: We will be brief. I knew that if Mr. Cronish came to the committee often enough, we would find something on which we agreed. I agree with you, sir, that the compensation board is not properly administered.

Mr. Cronish: Mr. Laughren has just made my day.

Mr. Laughren: I do want to pick up on a couple of things you said, and I want to be careful because I do not want to read more into it than you meant, so please correct me.

When you were talking about the ceiling and other costs, I think you indicated that decisions should not be made by a third party who has no interest in the welfare of the economy of the province. I did not know what you meant by a third party. I did not know whether you meant the injured workers, the government or the board. Who did you mean?

Mr. Cronish: What is happening is that right now we have a public announcement that there is going to be a 15 per cent increase in the cost for the Mechanical Contractors Association of Toronto.

Mr. Laughren: Who made that? The board?

Mr. Cronish: The board. We know there is the intent, perhaps, and that would have to be determined by this committee. Are we going to go to a \$31,500 ceiling level? If so, we have a 20 per cent increase in ceiling. The mechanical contractors pay wages in excess of \$30,000 to their workpeople; so we then have a cost of coverage increase of 20 per cent through ceiling adjustment and a 15 per cent increase through rate adjustment, which means we have a 35 per cent increase in a recessive economy. Where does the money come from?

Mr. Laughren: I am not questioning that at all; I understand what you are saying. What I do not know is who is the third party. Is it the board?

Mr. Cronish: The third party could be this committee dealing with the rate ceiling, dealing with the coverage--

Mr. Laughren: The first two parties are the employers and the employees. Is that correct?

Mr. Cronish: Yes.

Mr. Laughren: Okay. So what you are saying is basically whoever, whether it is the government--not this committee; we do not set rate increases--



Mr. Cronish: You suggest rate increases.

Mr. Laughren: Yes, but they do not take half of our suggestions. The final decision on legislated increases is the government's, and you are looking at them right there. The decision on assessment is the compensation board's.

Mr. Cronish: There is a staff actuary on the compensation board, ratified by whatever committees it goes through and whatever.

Mr. Laughren: At the board.

Mr. Cronish: It also goes the minister, I believe, for approval.

Mr. Laughren: I do not know that.

4:10 p.m.

Hon. Mr. Ramsay: By statute, I cannot alter or change the assessment decided by the board. I can by persuasion, which I did last year.

Mr. Cronish: I understand that. You reduced the assessment the board had recommended.

Hon. Mr. Ramsay: We reduced it from a suggested figure of 28 per cent to 15 per cent maximum and, on average, 13 per cent.

Mr. Cronish: I was only suggesting by persuasion and not by right.

Hon. Mr. Ramsay: I just wanted to make that clear.

Mr. Laughren: Just to follow up on what the minister said, do you agree with that decision to have the assessment lowered from 28 per cent to 13 per cent--

Hon. Mr. Ramsay: Thirteen per cent on average.

Mr. Laughren: --on average in view of the fact that it would increase the unfunded liability?

Mr. Cronish: You are looking at an expedient resolution of a crisis. The crisis that was to have been met was not met, that being to get the board to stop spending money. You also have a crisis in that the board has 3,200-odd employees. One questions in this age of automation whether it needs 3,200 employees. In fact, should the same situation occur at the board that happened at Simpsons last week? Why are there 3,200 people, and is there justification for a board overhead as high as it is in these times?

There are many reasons for a reduction of the rate increase, but that is a tradeoff, you see. The other side of the equation was not met; that is, the reduction in spending by the board. Spending increased substantially instead of decreasing.

Mr. Laughren: So you are saying they would not have needed to have done either the 28 per cent or the 13 per cent on average if they had taken those other steps?

Mr. Cronish: No, I did not say that. I said the reduction was expedient because the society could not bear the cost of the increases. You must remember that the board underfunded itself in 1981 and 1982.

Mr. Laughren: I do indeed.

Mr. Cronish: The reason for underfunding with respect to what has happened is a question that requires both political and actuarial considerations.

The board did not anticipate the nosedive that the economy has taken, and historically, years before, the board was not investing in short-term securities and therefore had no income out of its fund. That was a shortsighted step taken by predecessors to the present board administration for which we cannot hold the present administration responsible. It is unfortunate that several hundred million dollars were lost literally through board inefficiency, but that has gone by the wayside today.

We have to pay the price for that, obviously, and the question is who is to pay for it. Should the consolidated revenue fund of Ontario pay for it--that is, should we all share in it--or should only the employer sector pay for it? I think we have to get into some very real issues as to who is to be responsible for past mismanagement.

I do not think it is an issue for resolution today. I just put to you in a simplistic way that if we stop spending as much money as we did, the current level of income is high enough to reduce the unfunded liability to zero over 30 years with the appropriate interest factors.

Mr. Laughren: Okay, I will not pursue it either. Having said that I agree to one part of your statement, I really do disagree with you. It is not very often that I rush to the defence of either the Ontario government or the compensation board, but I think it is unfair to say that neither the board nor the government has an interest in the welfare of the economy of Ontario.

Mr. Cronish: I did not say that to you.

Mr. Laughren: You said "third party." Then I asked you who the third party was, and you said the board and the government.

Mr. Cronish: You are interpreting things, sir.

Mr. Laughren: Do not let me do that then. Correct me.

Mr. Cronish: I would not stop you from having fun.

Mr. Laughren: No, I am not trying to have fun. This is painful. Tell me who it is who has no interest in the welfare of

the economy of the province who is making these decisions. That is what I cannot find out.

Mr. Cronish: I did not say that to you. If you read what I wrote, then it is crystal clear to you that you have to have somebody taking responsibility.

Mr. Laughren: Right.

Mr. Cronish: A third party can be anyone who has an interest in the matter.

Mr. Laughren: Now I am even more confused.

Mr. Cronish: As the case may be.

Mr. Laughren: Yes. I just do not know who this third party is who has no interest--I wrote it down--in the welfare of the economy of the province. I do not know who that third party is. I do not know anybody who does not have an interest in the welfare of the economy of the province. I might disagree with the way in which he would go about improving the economy of the province, but I do not think there are many people who do not have an interest in it. I do not know who he is unless he is a subversive, but I do not think you would accuse the board or the government of being subversive.

Mr. Cronish: You have misconstrued the whole thing.

Mr. Laughren: I do not mean to.

Mr. Lupusella: Unless you meant the New Democratic Party as the third party.

Mr. Gillies: It would make more sense.

Mr. Laughren: The other question is with respect to when Mr. Cronish was talking about the reasons for the financial predicament in which the board finds itself now, and I believe that unfunded liability is a predicament. He cited two reasons, I believe. One, he said, was that they had overspent, and I think he meant the level of benefits; or two, he said people are being compensated for the wrong things. I am not sure whether you meant they were not job-related or they went on too long or--

Mr. Cronish: Everything like that. The problem we have is that many of the benefits being paid today are not job-related because the disability is one that takes hours or days, and instead is taking weeks or months.

For example, I have a bus driver who used to work for the city of Sudbury who claimed he misadjusted his seat, and the result has been five years and seven months of total temporary benefits. He is probably within your riding, I suspect, Nickel Belt. The board chose the easy way out; they gave the employer--

Mr. Laughren: Why would you suspect that?



Mr. Cronish: I would just gather that.

The board, rather than saying to the worker, "You really do not have a disability," said, "We will give the employer all the relief of costs of the claim." They fund for that, you see, Mr. Chairman and Minister. They cause this occurrence to take place where they have the dollars available to do that sort of thing, where there is no real disability other than the person's refusal to go to work.

I was referring with respect to third party at page 23 of the submission, Mr. Laughren--

Mr. Laughren: Are we back to that?

Mr. Cronish: That is what I want to clarify for you.

Mr. Laughren: Okay. That is fine by me. Where is that?

Mr. Cronish: We are talking about third-party confirmation of the workperson's ability to return to work. So with respect to your question on the third party, we are looking at the test of an independent medical examination to confirm what is the workperson's disability and whether he is available for employment. That is the issue of the third party to which you made reference.

Mr. Laughren: To come back to the question I asked just now on the overspending. I understand what you said before and you put it quite clearly and quite starkly. If you want to deal with the unfunded liability, you reduce the amount of money you spend by the suggestions you have made, and over the years that will reduce the unfunded liability. I think you said 30 years or something like that.

Mr. Cronish: Yes.

Mr. Laughren: I am wondering to what extent--or do you feel it is dredging up the past and therefore not appropriate--the level of assessment that was imposed upon employers in the last 10 or 15 years--I think the stats we had were for 10 years, were they not? It was 1975 to 1983 or something like that, where at a time when benefits were going up, assessments were going down.

Mr. Cronish: No, the base level was going up.

You see, you misunderstand the whole problem. In America, where you have the right of insurance companies to fund workers' compensation, you will notice that insurers will pay out only 65 to 70 per cent of every dollar of premium received, and the benefit levels are just as high as in Ontario. The question is why. It is because under their weighting system they can determine the full value of a claim 18 months from the day of the occurrence.

We have claims that have no ceiling on them, that run on for ever. There is no cap, none whatsoever. Whether that is right or wrong is not for me to tell you. I can just say that there are different methods of evaluating a worker's disability. You have

had grave concerns over the supposed meat chart; I have read numerous comments in the paper about that. But the question is, how do you determine objectively the true future wage loss when you have no wage loss at present?

There are many problems that are within the current system--on permanent disability rating, for example. You have not even addressed those with the revisions to the legislation. That is such a complex area I have stayed away from them. I know the minister and this committee have their hands full in dealing with what is in Bill 101. The true test is what is the impairment of the workperson, and perhaps paying out pensions less than 10 per cent in cash is the best way to get rid of it.

So I say to you that you miss the point again. You just miss the point.

Mr. Laughren: I miss lots of points, but what I am trying to get at is to what extent you feel it was appropriate to have assessments going down, which they were in absolute numbers, were they not, during the last eight or nine years?

Mr. Welton: Yes, that is right. Down in a couple of years---

Mr. Laughren: Yes, when benefits were going up.

Mr. Welton: During the late 1970s, I guess.

Mr. Laughren: Yes, when benefits are going up. That is what I am trying to question.

4:20 p.m.

Mr. Cronish: The only reason benefits went up is the board started overspending money it did not have when the controls that had been in place when Mr. Legge was chairman ceased to exist.

Mr. Laughren: No. They went up because the Legislature passed amendments.

Mr. Cronish: No, it was not just legislative amendments. It was the ongoing lack of control in terms of what disablement is. That is what caused the real problem with the illiquidity of the board structure. The legislative amendments only added problems to that, but there is no reason to say legislative amendments should not have been made. The minister acted properly at the time in making these amendments to keep pace with inflation.

The employers have real concerns. They are not a hard-nosed bunch of people with no concern for their work force, as you may try to indicate. There are substantial real concerns about funding.

Mr. Laughren: Never.

Mr. Cronish: We must look at all issues of funding. If we are talking funding, we must look at the other side of the

equation, and you do not seem to want to. The fact that a workperson has a low-back disability may not arise from his work. He may have congenital malformation of the spine. He may have degenerative disc disease because he had an improper diet as a child that precipitated problems in the fibrous annular structure of his disc material and caused a prolapse from sneezing.

We do not understand the back, but I will tell you as an aside, a healthy disc cannot be shattered except by significant force, such as an explosion or being struck with a great weight of 400 to 500 pounds. The disc is probably the strongest area of the body when it is healthy. It is also the weakest area of the body in being subject to degeneration, which happens as we grow older. We have to appreciate that worker activity may not cause the disc material to degenerate, but lifestyle will. Obesity is a proximate cause of disc disease.

Mr. Lupusella: Or heavy work.

Mr. Cronish: Not heavy work, sir. Heavy work does not hurt workers who are in shape. If the worker has a protuberant abdomen and he is carrying a lot of stress to his lumbar 5, sacral 1 level of his spine, he will cause problems in his back regardless of his work activity. There are many studies in America I can direct you to on that.

Mr. Gillies: With respect, where do you see the responsibility of the board ending? Taking for granted that somebody is not in shape and his back is not particularly strong, if he is hurt on the job, is that still not a result of the employment?

Mr. Cronish: It is a result, but what is the disability from the employment? Is it the soft tissue injury, where the worker has a pain or a swelling that goes away in two or three days, or is it the terrible disc prolapse that results because he is not in shape and he is a candidate for disc disease because he has had it for years?

There has to be some objective evaluation of the responsibility of not only the board but also the employer. Should we be reinsuring, for example, to help that type of injured worker to a supplemental assessment? Should there be a special fund directed that way? There are lots of ways of looking after the injured worker. It depends on what our understanding is and what we are dealing with.

There is no question the person would have incurred the prolapse from the nature of the job because he was subject to degeneration or what have you, but the worker activity did not produce that severe disablement. That is where the specialized medical evidence comes in. If the board will not produce it to the employer, how can the employer meet a case? You might as well give the board a blank cheque and say, "Fill in the amount every year and I will move to Pennsylvania."

Mr. Lupusella: Mr. Chairman, we have five minutes before we reach 4:30. I hope I will be able to make my comments.



I know philophically speaking we disagree, but in relation to the mismanagement of funds caused by the board, how can you accuse the board of mismanaging the funds of the employer when the board has billions of dollars invested? Actually, they have been very stringent in giving out benefits and at the same time they were able to invest the money so well that they have billions of dollars invested.

Mr. Cronish: I wish that were the case, sir.

Mr. Lupusella: I do not have the figures in front of me, but I am sure they are available. I am talking about \$600 million invested in Ontario Hydro bonds, real estate, etc. The money is there.

Mr. Cronish: I would like you to show it to me. I would like to know why we have an unfunded liability of \$3 billion plus if all this money is there.

Mr. Chairman: That is probably a question for a different time and a different place.

Mr. Lupusella: In the course of your presentation you made particular reference to words like malingering and abuse, people abusing the system and so on. You also made particular reference to civil proceedings. You mentioned the Charter of Rights and mentioned that employers do not have the same rights as employees and so on.

I would like to ask you a few questions. I notice you have been attacking family physicians as the main cause of the problems caused by the board in giving out benefits to injured workers. I have to disagree with that statement, because after two months of treatment by a family physician, the board usually writes a letter to the doctor or the injured worker for an examination by an independent specialist. I really do not know on what you can base your assessment about the prolonging of the disability caused by the family physician's report, because they are not surveyed by the board or the board does not keep track of the treatment given by family physicians.

Mr. Cronish: You have just proved my submission. I said that two weeks is the average length of claim and, if it is a two-day disability, the worker should be back to work on the third day, not 10 weeks later.

Mr. Lupusella: I do not want to get into a debate, but we heard from the board that with 60 per cent of the claims before the board, they returned to work after 90 days, if I am not mistaken. The majority, 60 or 70 per cent, go back to work in between 90 days and six months. That is the kind of figure we got, so I really do not know where you got the feeling there was a prolonging of the disability of injured workers when you were losing faith in the medical profession. You are also arguing about the disabilities injured workers are faced with when an industrial accident takes place.

Are you disputing the validity of medical reports given out

by doctors and specialists employed by the board, which in some way is the supervisor of what the physician is doing under the present system?

Mr. Cronish: There seems to be abuse with ethnic workers by doctors who have immigrated to Canada from elsewhere or who are of ethnic extraction themselves. There seems to be such gross abuse that I can give you clinics on College Street where the coverage they are providing to injured workers to support disability is totally out of control. That seems most unjust and unfair to the legitimate claimants.

There are legitimate claimants, Mr. Lupusella. You know it and I know it. I act for those people and you act for those people. I do not just act for one side. It is inopportune for you to suggest doctors do not cover their documentation to give the benefit to their patients. You know better.

Mr. Lupusella: You mentioned civil proceedings. I would like to raise a very serious problem affecting survivor spouses. As you know, with the present system a survivor spouse receives in the range of \$593 per month under Bill 99. You made reference to civil proceedings. You know that the Workers' Compensation Board is by statute a quasi-judicial system. Do you think that amount is unfair? Would you like to see the unfunded liability rise to terminate the injustice--I am talking about fatal cases and the survivor spouses--and to put an end to the injustice of survivor spouses receiving \$593? With your experience of civil proceedings, how much should they receive?

4:30 p.m.

Mr. Cronish: I think the question has to be answered in two ways. First, if the surviving spouse is living common law with another party and there are two incomes in the family, they are no longer a surviving spouse in that sense and therefore should not be subject to the full level of support that a single person raising a family would be subject to. I think the whole area of survivorship rights has to be re-examined by this committee and by the ministry. It is the area of greatest need that can have the least impact on unfunded liability.

I am sure the amount of benefits paid is just a minimal percentage of gross benefits paid out by this board, and it is probably the area of reform where it could do the greatest good, but you must have some controls in place. A person who is a surviving spouse living common law is no different from a person who has remarried.

Mr. Lupusella: Again, we might get into a long debate. I have another question about full disclosure.

Within the present system there are people defending the employers who are referring their own medical reports to independent specialists without seeing injured workers and, as a result of past medical reports released to the board by other independent specialists, they formulate their own medical opinions, which are used by solicitors defending the employers'

We talk about the Charter of Rights and civil proceedings. Do you think it is right for an independent specialist to formulate a medical opinion to be used before the board and before the appeals system without ever seeing the patient?

Mr. Cronish: I think it is right because it is only another piece of evidence the board weighs in its fact-finding process. If the board thought it was irrelevant, the board would say so. It is a question of taking expert opinion and amassing it on the basis of the information disclosed, which is very special in nature. It is not information that lay people such as you and I understand, and if you were to turn to a physician for a report to understand what a doctor had written down, you would be justified in filing it and saying that this is an opinion. If someone else on the other side were to file a different report saying that this is not the case, then the board would have to seek help through a medical referee such as the proposed medical tribunal.

What you are trying to do is to satisfy your constituents' needs, the needs of those people you represent constantly before the board on a daily basis. I often question what you do here in the Legislature. You are before the board in such a daily, routine system. But your constituents must be pleased with your attendance at 2 Bloor Street East, and I can only say that you use this evidence on a timely basis to understand the case and no other person should be at a loss to use that same information to understand the nature and matter of the case.

The board makes an evaluation based on the medical evidence on file, seeks advice from its own specialists, considers it and reports on an equal basis, so I cannot understand what your question is.

Mr. Lupusella: I understand what my question is and I am sure you also understand the content of my question. The final question I have is in relation to the principle of pension assessment.

Lately employers have been objecting that a permanent disability award was not supposed to be granted by the board and many hearings and appeals have taken place to defeat the principle of permanent disability pensions for injured workers. Are you trying to say that all the doctors employed by the rehabilitation hospital of the board are not effective, are not independent, because they are the ones suggesting whether or not a permanent pension should be granted to an injured worker, or are you completely losing faith in the medical profession and its independence?

Mr. Cronish: I think your question is two questions, and I will try to answer them briefly. First, under the current permanent disability awards there must be some element of future wage loss before a pension will issue. The board doctors do not appreciate that when a worker comes back to work, if it is a unionized company, for example, the wage at which he returns is often higher than the wage he was earning at the time of his disability, and in fact there is no future wage loss. Trying to convince the board's physician of that results in the introduction



of the meat chart. They say, "We have a schedule of benefits that has been actuarially considered according to which this is what will happen." Whether it happens in fact or not is not their concern.

So we have a whole program that has to be readdressed, and I certainly think this is not the place for it. The crisis produced by the pension award really is a subject for further study and consideration. I would certainly urge, Mr. Chairman, that the ministry give thought to creating what I would call a whole think-tank structure to have representation strictly with respect to this whole issue of pensions. But it certainly should not be done here with respect to Bill 101; there are enough problems before this committee and certainly before the ministry.

I think Mr. Lupusella demonstrates that he really does not understand what a pension is.

Mr. Lupusella: I do. You do not.

Mr. Cronish: I think the problem we have is that the board doctors have to have just cause for showing future wage loss. They have not shown that, but they do award these pensions because that has been board practice. Whether the practice is right or wrong is something for the committee to consider and perhaps the minister to have further study made upon. It just demonstrates to me this gentleman's poor, unfortunate lack of understanding of what workers' compensation really is all about.

Mr. Lupusella: Mr. Chairman, I have been so lenient in not interrupting the gentleman here. On Bill 101 and this particular reference about an independent medical review panel, are you saying we are wasting our time or the minister is wasting his time?

Mr. Cronish: It is an excellent step, a first-rate step.

Mr. Lupusella: What is so different in relation to all the specialists and doctors employed at the present time by the board? You have lost faith with the present system. What is the new system going to give you? I really do not know what it is all about, what all the fuss is going to be all about.

Mr. Cronish: I have been critical of this board for 12 years. There is nothing new about the problems and errors that existed at Bloor Street. I think this minister is trying to make a very valid attempt to correct some of them.

Mr. Chairman: Thank you. May we move on? We have two more questioners here, Mr. Havrot and Mr. Riddell. I think that should wrap it up.

Mr. Havrot: Mr. Chairman, I fully concur with Mr. Cronish's presentation on page 4, the last paragraph. "In view of the lack of control for treatment of the workmen by individual physicians and the special relationships between patient and physicians, it is this writer's submission that the cost of treatment has become unduly excessive, and the control of the workman to return to gainful employment within a reasonable time

has been lost altogether by the board."

I would like to refer you to an incident that I had just recently with a young lad who pulled a hamstring muscle on March 26. He was recently awarded benefits. Under normal conditions a hamstring muscle, I am told, takes about two weeks to heal. If you take your athletes and so forth who constantly have hamstring muscle pulls, they are back on the sports scene within a couple of weeks.

Keep in mind that this happened March 26 and he will be off work at the request of his doctor till about August 10. I concur exactly.

On the other hand, I have had bona fide, legitimate cases where the board has turned down and there have been extreme difficulties. I wholeheartedly concur that there has to be a medical review panel and some people who can really evaluate the injuries and get on with it right away rather than prolong this for months when maybe two weeks would have solved the problem.

Mr. Riddell: I really think Mr. Havrot said what I wanted to say. I did not want Mr. Cronish and his party to leave here thinking that there was not some concurrence with the views he expressed here today. I would hope that this report will not be dismissed lightly.

If you have never been an employer, it is very easy to spend somebody else's money. I have had cases as an employer and as a member of Parliament of abuse of not only workers' compensation but also unemployment insurance. You go right through the whole gamut of various programs that prevail at this time, both federal and provincial. I maintain that unless we seriously look into some of the abuses, governments are never going to get out of trouble.

I had a case of an abuse in my office not too long ago. A man hobbled up the steps and into my office and proceeded to tell me all about his disablement and what the Workers' Compensation Board was not doing for him and what have you. When he left my office, my secretary reports that he went down the steps two at a time. I kid you not. That is an example. There is no question there is abuse. Mind you, I would think many of them are justifiable claims. I really think we have to look into some of these unjustifiable claims and halt some of the abuse that is going on.

I say this not only for workers' compensation but, by God, I hope that whatever government is in power federally that we look into the abuses taking place in unemployment insurance. It just makes me sick to see what is going on in connection with some of our so-called welfare programs.

Mr. Laughren: I think everybody agrees that WCB is poorly administered.

Hon. Mr. Ramsay: May I make a provocative statement?

Mr. Chairman: If there is no response from anybody, the

minister would like to make one provocative statement.

4:40 p.m.

Hon. Mr. Ramsay: All I wanted to say was that I am delighted to hear what Mr. Riddell had to say. I concur with him completely, but I wish he would have a talk with some of his caucus colleagues sometimes. The arguments I get in the Legislature from some of the members of the official opposition are completely opposite to what you have said.

Mr. Riddell: Unfortunately, there are not enough right-wing members in our caucus.

Mr. Lupusella: To strike the right balance, I hope you will be able to investigate how all the rotten employers are operating their businesses in Ontario along with all the fraudulent cases taking place before the board. I am sure you will do that, if you follow the recommendation of Mr. Cronish.

Hon. Mr. Ramsay: Wait a minute. I made my comments tongue in cheek. I am sure you said yours in a very serious manner.

Mr. Lupusella: I did because I am offended by the presentation of this brief.

Hon. Mr. Ramsay: With the greatest of respect--

Mr. Lupusella: I restrained myself.

Hon. Mr. Ramsay: You made a blanket indictment of the employers of this province. I do not think that is fair. I spent 25 years in private business and certainly there are businessmen who do not deserve to be there and there are businesses that do not deserve it, but you have made a blanket indictment. You cast an accusation against all of them.

Mr. Lupusella: You have been accusing injured workers. I think, just to strike the right balance, it is fair to say that if such process has to take place some day, even the rotten employers should be investigated. I am not accusing all employers, just the rotten employers.

Mr. Chairman: I would like to call a halt to the discussion we are currently having. We all know there is good and bad on each side of the coin. I would like to thank Mr. Cronish for appearing before us. We did go longer than anticipated. I do not think that is true either. We probably anticipated a very long time with a presentation such as yours. It was an excellent presentation. We have a lot of meat to discuss. I am sure the ministry has a lot more to consider now that you have made your presentation.

Before committee members rise, we would like to determine what, if any, travel we would be compelled to make during the course of these hearings. As you can see, Hamilton has about four or five different groups that would like us to meet there, Ottawa



has one possibility. In Sudbury there are two definite; in Thunder Bay there are two definite; Windsor has only one possibility. Can I have some suggestions?

Mr. Laughren: Mr. Chairman, I have a suggestion I would put to the committee. Because of the small number of people who have indicated in Ottawa and Windsor, I would suggest we not go there, but rather invite those groups to come here. Second, I suggest the committee members all go to Hamilton, probably for one day. It is not far away anyway. I would also suggest that the committee split, half to Thunder Bay and half to Sudbury.

Mr. Chairman: On the same day?

Mr. Laughren: On the same day. I put that out for debate.

Mr. Gillies: I think Mr. Laughren's suggestion is a good one. I would like to ask the clerk if this is completely up to date or has anyone else from either Ottawa or Windsor or elsewhere requested a hearing. Is this the sum total?

Clerk of the Committee: The only additional request was from Hamilton and District Labour Council, and they had a problem with deadlines.

Mr. Chairman: They had a problem with deadlines no matter what day we chose to go.

Interjection.

Mr. Chairman: You notice that both Windsor and Ottawa are only possibilities.

Mr. Lupusella: If a subcommittee goes to Sudbury and Thunder Bay on a different day, maybe the rest of the committee can hold hearings in Toronto.

Mr. Laughren: No, no. That is splitting it too fine. Why not have half the committee go to Sudbury and half to Thunder Bay?

Mr. Chairman: At the same time?

Mr. Laughren: The same day, and back to Toronto the next day.

Mr. Lane: The only problem I see is that there are not enough days in the three weeks to accommodate those out-of-town trips and still take care of the requirements we have in front of us. We have only two open days, I believe. This morning we were talking about inviting the doctors and we were talking about inviting other people.

Mr. Chairman: As far as the doctors are concerned, Mr. Arnott has talked to the association, and they are not going to have the directors' meeting until two weeks' time. I do not see any possibility of their coming here during these July meetings. It will probably be some time in September. We will have to pull a day out of our committee meetings in September.

What the clerk says he can do is take the delegations that are to appear on Wednesday, July 25, and put them on Wednesday, August 1. We could spend, let us say, Wednesday, July 25, in Hamilton and split the committee up for July 26 in Sudbury and Thunder Bay and get that out-of-town travelling done. That would be next week. Does that sound like a good idea?

Mr. Lupusella: I do not have any objection. The only question I have is what kind of an arrangement are we going to have for the subcommittee reaching Sudbury and the other one reaching Thunder Bay? Is the clerk making travelling arrangements for us?

Mr. Laughren: You are going to Thunder Bay.

Mr. Chairman: Your arrangements have been made. I would assume each caucus would determine who they wanted to go where and then advise the clerk and we can go from there. The vice-chairman could go one place and I would go the other place.

Mr. Laughren: Are those the dates?

Mr. Chairman: Yes, those are the dates that appear to be the best dates, Wednesday and Thursday of next week. I am saying Hamilton on Wednesday and the other two places on Thursday. I do not care if it is the other way around.

Mr. Watson: If it is not going to make any difference, I would sooner do it the other way around. If we end up Thursday afternoon in Hamilton, some of us are two thirds of the way home.

Mr. Havrot: If you want to reverse it, if we end up in Sudbury some of us are two thirds of the way home, too.

Mr. Chairman: It does not matter.

Mr. Havrot: I was thinking we could have the Sudbury trip one week and Thunder Bay the other, but it is a little too close; it is trying to push too much. In view of the fact that the whole committee is going to Hamilton on July 25, perhaps we could defer the other trip to August 1 and 2, the following week. We are trying to crowd too much into the next week.

Mr. Watson: We could travel one day one week and one day the next.

Mr. Riddell: I have a big barbecue on my farm on July 24.

Mr. Havrot: Let us have it this week.

Mr. Riddell: You are all invited.

Mr. Chairman: The clerk tells me there may be a little bit of a problem on August 1 and 2. There are some groups that are coming on tentative booking on August 1 and 2, the last two days we are here. In other words, they want to hold off, to get their briefs ready.

Mr. Gillies: Why do we not have the clerk come back to us tomorrow with a suggested itinerary? I am sure he can work it out.

Mr. Chairman: One one week and the other the other week? Would you work it out and advise the committee members? We will adjourn until 10 o'clock tomorrow morning, across the road in the Ontario Room.

The committee adjourned at 4:50 p.m.





CA26N

XC13

-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, JULY 17, 1984

Morning sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dungas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister  
of Labour (Brantford PC)

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Welton, I., Senior Liaison Officer, Program Analysis and  
Implementation

Witnesses:

From the Association of Injured Workers' Groups:

Agosta, R.	Kennedy, J.
Bastarache, I.	Lall, D.
Biggin, P.	Lamanna, P.
Botticella, V.	Liotti, B.
Copps, A.	Morlano, A.
DiPucchio, M.	Perricone, A.
DiPucchio, V.	Quatrala, J.
Falcetta, T.	Ramani, F.
Farquhar, A.	Ramani, Z.
Ferrari, M.	Spina, A.
Giffening, H.	Stanslow, P.
Hyman, W.	Tatangelo, S.
Jaisareesingh, J.	Zakhar, J.

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, July 17, 1984

The committee met at 10:00 a.m. in the Ontario Room,  
Macdonald Block.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming the adjourned consideration of Bill 101, An Act to  
amend the Workers' Compensation Act.

(continued, next page)





July 17 - 2

--- UPON COMMENCING AT 10:00 A.M.

5                    MR. CHAIRMAN: Good morning, ladies and gentlemen.  
We would like to get our meeting underway. The purpose, of course  
is to hear your views on Bill 101, which is an Act to amend the  
10                    Workers' Compensation Act. I think it has been explained to you,  
in general terms, what the amendments to the Act are, and we want  
to hear your views.

15                    My name is Bill Barlow. I am the member for  
Cambridge. On my immediate left is the Honourable Russ Ramsey,  
who is the Minister of Labour. On Russ' left is Floyd Laughren,  
20                    most of you know, obviously. On my immediately right is Phil  
Gillies. He is the parliamentary assistant to the Minister of  
Labour. Beside Phil is John Lane. Beside John is John Sweeney.  
Paul Yakabuski is next to John. Next to him is Ron McNeil. These  
25                    are all members of our committee who are charged with the  
responsibility of reviewing these amendments to the Act and hearing  
different viewpoints about them.

30                    We have a list of speakers here. I am going to  
ask Mr. Biggin from the Association of Injured Workers to call on  
the individuals one at a time. As you know, we have until  
approximately 12:30, but we aren't restricted to that if it runs  
over a little bit. We are quite willing to sit beyond that, but  
we would like to finish up this morning sometime and hear as many  
of you people that wish to speak as what time permits. I think



July 17 - 3

we will probably be able to hear you all. Perhaps in some cases some of the members of the committee may wish to ask you questions, so if you would just remain at the microphone if there are any questions.

With those remarks, we are ready to proceed. Phil, if you would like to call upon the people?

MR. BIGGIN: Thank you, Mr. Chairman. The first speaker will be Joe Quatrale,

MR. QUATRALE: Good morning, gentlemen. (Statement in Italian.)

(Interruption by member of audience.) Mr. Chairman, this lady is complaining because for a long time she has had no leg and she only gets \$1.50 a week and she can't live with \$1.50 a week. That is what she said, Oh, a month.

MR. FARQUHAR: She is saying she can't walk any more and her pension is \$141.50 a month.

MR. CHAIRMAN: Is the lady's name on the list and does she wish to address us later on? We would like to hear from her later on, if she would. Put her on the list; we would be glad to hear from her.

MR. QUATRALE: We have a number of people who are going to speak -- about inflation, the supplement, Canada Pension, medicare, and handicap assistance, and the old pensioners and the level -- like, the guy who is insured at this day, the old pension should be at the same level with the same seniority. Right



July 17 - 4

now, Vito Botticella is going to talk about inflation and supplements and the Canada Pension. Vito is coming up.

MR. BOTTICELLA: Good morning, ladies and gentlemen:

5 Thank you very much. At least you let me express my point of view on Bill 101. You have two different injuries. You have the old injury people; you leave right in a lump. Since 1950 on, those people, they have a really little pension. I will bring little  
10 points. At the time, the guy who was working had \$4.00, or whatever. Now, the same guy, with the same qualifications has \$20.00. He was never brought up at least to living.

15 So, I think this Bill is nothing for the people it is supposed to keep alive, who are supposed to be human beings. I want to thank you very much for listening, and I hope you understand my point of view.

20 The second thing, let's say a guy that has reached around 55 years old. He wants to be retired, because there is no way he can find a job, especially today. There is no way he can find an easy job or a light job. They don't even want to listen if you apply for it. Now, that guy there, at least should be  
25 supported from the Compensation Board until he can get his old age pension -- until he can keep alive. Thank you very much and I hope you do something about it.

MR. BIGGIN: Pat Lamanna?

30 MR. LAMANNA: Thank you very much for bringing me in. First of all, good morning jury.



July 17 - 5

For my opinion, I was reading the Bill 101, which covers all the new injury people, which are spoken about personally. I don't know, because other people are injured. I have been disabled over five years, which I was injured in 1970. At that time it was the same thing that my my friend, Vito Botticella, was saying. That time it was different wages. We wanted to bring it up to today's wages. That is what pensions should be today.

Secondly, anyone that is on disability and is receiving already Canada Pension, which I am, the pension from Canada Pension does not equalize the cost of living for myself and whoever is injured for a long time. We should include and supplement to be equalized to the cost of living, with industry to date.

Third, any injury is to be for a long time. This should be corrected. Any disability should be corrected and supplemented to retirement -- to 65. Because Canada Pension and Compensation, it is not enough. We are right to believe it. We built up Canada. Not the new people. Okay; take Bill 101. It doesn't hurt the new injured. But others of us, we don't have enough protection.

Members of the jury, how do you feel about this case for old injury people? We don't have nothing to protect us. Whoever is on disability in this case, all we are asking for is to be the same with what is in Bill 101.

Plus, anyone who dies on the job and would be





July 17 - 6

on disability, any widow should get the same as whatever is in  
Bill 101.

MR. BIGGIN: Julius Zakhar?

MR. ZAKHAR: Good morning, ladies and gentlemen.

My name is Julius Zakhar. I am 57. I was hurt on the job in 1980.  
I had an operation in 1980, October the 3rd.

I was employed full-time on a steady job with all  
the company benefits when an accident at work resulted in an  
operation on my back in 1980. I was released by my job from my  
employer. I was called into the Workmens' Compensation Hospital  
in 1981 for five weeks for therapy and rehabilitation. After  
release from the hospital, a counsellor was assigned to my case  
with the hope of returning me to the work force.

In April, 1982, I was placed with COSTI Rehabilitation  
Centre, where I worked for five weeks. Finishing that period, I  
commenced to find work by myself with the help of my counsellor  
and completed several rehabilitation jobs. One lasted a week,  
another four weeks, another five weeks, nine weeks. All private  
companies were looking for free labour and were not ready to give  
steady employment. One job was for a florist delivering plants.  
When I asked my employers what chance I had for steady employment  
I was told the job was only part-time.

This was not any good to me as a married family man.  
My pension was assessed in 1983, giving me a supplement which was  
paid from June, 1983 to April, 1984 -- not even a full twelve



July 17 - 7

months. The supplement was discontinued, leaving me with a monthly income of \$271.50 a month.

5 I would like to ask you, ladies and gentlemen, if  
any of you are able to live on \$271.00 a month, supporting a child.  
I am not just speaking on behalf of myself. I am speaking for  
thousands of people the same -- who were injured on the job and  
whose employers, like mine, was collecting my benefit from the  
10 Workmens' Compensation Board for 15 weeks and collecting at the  
same time the group insurance which is paid to me. But they were  
making money on me.

15 I would like you to examine my case. I could prove  
it. This is a contract which I signed. Every -- each one -- every  
contract, I completed. And after all this, in 1984, July 17th, I  
am still out of work. I couldn't find anything in the last three  
months. I have to suffer to live on \$271.50 a week. I had  
no help, whatsoever, from anyone else. I attended the Liberal  
20 meeting here on June the 6th. And I was calling for help and  
nobody could help me.

25 I am asking you, ladies and gentlemen, in your  
Parliament or wherever, would you please help people like myself  
and a thousand of us who cannot find a job after suffering the  
accident. That is another to carry the rest of my life. I have  
to wear a brace. I can't sit too long. I can't stand too long.  
And I don't know what to do. I am begging you to look into that and  
30 please get help from somewhere. Thank you.



July 17 - 8

MR. BIGGIN: Mario Ferrari?

MR. FERRARI: My name is Mario Ferrari. I have been injured since November 22, 1976. The time I left the hospital is June, 1978, on WCB. And I have sat in this wheel chair. It is bad, bad all the time. I had two operations in the hospital. That is because I had this injury. It is very bad. The problem is -- you must think about my problem. Because every day I am alone. The kids go to school. My wife, she works the night shift. Most of the weeks she took me to the hospital or to the doctor who says she got nervous. My wife, she has got the blood pressure and suffers for me because every day she leaves hi alone. I am near to the wood burning stove in the winter time. Tell me where I have to spend my time. Seven months a year I have to sit in this wheel chair or sit on the floor and slide like a kid around on the floor. I don't know where I have to spend my time. For myself, nobody is helping me. Please, my wife has got less than \$300.00 to support me. If we can't, I have to go with my family, my wife and my house for everything. Please I ask if I can have somebody to have contact with the people or assist, or an opportunity to have a place like WCB to stay with the people and extend assistance.

I am sorry. I can't do anymore. To talk is ...

I want to speak. I can't very well. But, I can't. I have a lot to say, but I feel so very, very nervous. That is why I can't say any more. Because I am tired to come down to come do



July 17 - 9

and ask for charity. That for me is called a charity.

I am sorry; I can't do any more. Thank you very much.

5        MR. CHAIRMAN: Excuse me. Just a minute. Mr. Lupusella has a question.

MR. LUPUSELLA: Mr. Ferrari, I have a question for you if you would like to answer.

10        You told us that you got injured in 1976. What kind of work were you doing before getting injured?

MR. FERRARI: Before I was injured? I worked for 12 years on construction. When I left construction, I went to work for the City of North York. I was doing my job. I was doing my job. I don't blame the guy who hit me. I lost my leg and my side. But I blame the government, because it sold the insurance for \$25.00. And coverage was \$50,000.00. And finally my wife, when I was unconscious, she choose the compensation. If otherwise she had chosen the \$50,000.00, I was done. So, I blame the government. It sells insurance for \$25.00.

      If the guy who hit me, if the insurance for my son, my wife or my daughter is \$1 million, and pay \$1,000.00 a year. I lost my side and legs on November 22, 1976. I was doing my job and the guy hit me from behind the garbage truck. I don't ask myself if I wanted this injury. I don't blame you. I don't the guy. I blame the government. It sells insurance for \$25.00. Because, if you don't have insurance of \$1 million -- I have my





July 17 - 10

wife every day with me and she is taking me every place I go. If I want to go see -- if I want to go down to the Exhibition or any other place I want. Or if I want to contact any other people, I can't go ahead with radio, television or the newspaper. I like to contact somebody else and have exercise. I can't go with all this. Because the doctor says, "You feel nervous, nervous and tired." My wife, she has got blood pressure because she feels sorry for me. And she is tired for the work on the night shift.

MR. LUPUSELLA: Mr. Ferrari, we understand that you are extremely upset. Would you please tell us how much pension the Board is giving you at the present time and what is the percentage of your disability?

MR. FERRARI: I have as a pension -- it is \$1,092.00 a month. They give me disability of 85%. No legs and no eyes.

MR. LUPUSELLA: So, the percentage of your disability is 85%. To get to \$1,092.00 a month, you must be receiving some sort of supplement pension, or what is it? Maybe Alec can ...

MR. FARQUHAR: It just happens that I have his case. It might be confusing to the committee members.

First of all, Mario has been injured twice. Both times he was working as a garbage man for the City of York. The first one was 1973. He hurt his hand quite badly. It was caught in the garbage compactor. I think it was the right hand. It was all cut up very badly. And he got a 15% pension for that.

Then, in 1976, a young drunk driver slammed into t



July 17 - 11

5 rear of the garbage truck and caught Mario between the car and  
the garbage truck at the back. As a result of that, he lost his --  
left or right? Basically, what happened was that both legs were  
very badly injured. They had to amputate the left leg -- not all  
the way up, but quite a way up. The right leg is in really bad  
shape and collapses under him, and things like that.

10 There are some really amazing twists to his case  
that really show many of the things that Bill 101 hasn't even  
addressed. First of all, Mario keeps talking about the insurance.  
Maybe that was puzzling you -- the \$1 million and ... .

15 Well, it was a drunk, young driver who killed him  
and of course, Mario was left to recover. He had a choice of  
claiming compensation or suing the person that hit him. The  
insurance money was so low that he was forced to choose compensation.  
So, one thing that is hidden in this is that if there had been a  
fair compensation from the insurance company, it would have paid  
20 him an awful lot more than he got from the Compensation Board.  
So, he is drawing attention to the small amount of money that the  
Board pays; that is number one.

25 Number two -- remember he said 85% for his leg cut  
off and the other one ruined? Well, the Board was willing to assess  
him 100% for those injuries. But they said, "He has already got  
15% for the hand. We will give him 35% for the legs." They say  
that the Act doesn't allow them to pay more than 100%. The Act  
30 does not in any way say that. The Act says that you cannot get



July 17 - 12

more than 100% for one accident. He has had two. A perfect example of the Act saying something and then the Board interprets it their way. One of the main things we are here for today is for you on the committee to look at that Bill 101 and make sure it tells the Board just what to do. Because if we leave it up them, we get into this type of problem.

The final thing that Mario is trying to talk about and a lot of the workers are talking in English because they want to communicate directly with you -- not through an interpreter. I don't want to talk too much myself; it is their day before you.

But the final thing is, his wife is sitting here. She works nights. She has got to keep money coming in, because the \$1,000.00 does not do it. There is something called an attendance allowance that is paid under the Act for the totally disabled worker -- the 100% pensioner. The attendance allowance amount is not set out in the Act. The Board sets it by policy. They have eight categories, depending on your disability. Well, they have put Mario in category two, I believe it is. The second lowest -- \$222.00 or \$240.00 per month is paid for his wife to help him with bathing and everything else that you can imagine -- dressing ...

Well, there is nothing in Bill 101 on attendance allowances. It is one of the worst aspects of the existing Act. There is a maximum of around \$900.00 a month for a spouse who stays home to take care of a totally paralyzed spouse. The Act doesn't set out these maximums. The Board sets them. And it is another



July 17 - 13

example of an area that you haven't yet addressed that needs to be addressed, and where the Board must be given very firm direction as to what it is going to do, or else we are not going to have justice.

MR. GILLIES: Could I just ask for a clarification? Is he now receiving 85% or 100%?

MR. FARQUHAR: He is getting 100%; 15% from one and 85% from the other.

MR. GILLIES: Did the blindness result from the same accident with the drunk driver?

MR. FARQUHAR: He went blind a few months after the accident. But up to now the Board doesn't recognize that. We are fighting that. But quite apart from the blindness, he is 100%.

MR. BIGGIN: Harold Giffening?

MR. GIFFENING: Good morning, ladies and gentlemen. My name is Harold Giffening.

As you can see, most people here are not very happy about Bill 101. Actually, Bill 101 -- any school kid could set it up. It doesn't need very much brains. There is no provision for automatic cost of living increase. The last increase was 5%, gentlemen. Now, if somebody lives in an apartment, the rent goes up 7%. His pay is gone. Who pays the hydro bill? Every damn thing goes up. It is stupid, actually. It is ridiculous. That is number one. Property tax, gentlemen. The property tax goes up. What you are giving with one hand, you are taking with the other





July 17 - 14

hand. If you want to play like that -- fine. You cap the property tax. Cap it. Cap all the utility bills. Cap it. Anything that goes over, the government is paying.

One mistake we are making all the way is that you want to pay us from the manufacturers society or whatever. Wrong. The whole society has to pay for that. Because the workers -- let not fool ourselves -- the workers increase the production threefold. A car cost today a third what it cost 30 years ago. Do you realize that? A car, a fridge, wash machine, shoes -- everything cost one-third of what it used to cost. The workers are getting peanuts out of it. They are getting short-handed. All I am saying is, you go after the financial institution as well to get the compensation covered.

Just for example, take what has happen to industrial CCM -- they let the companies off. You destroy the companies if it is a financial institution. They say, "We have no money to pay for compensation." Another chap says, "How about dental care?" When I worked up in the mine, as you can see in front, I have a gold bridge -- no problem. I had no problem to pay \$99.00 to Dr. Jeffries in Kirkland Lake. Today, I need a partial plate. I can't pay \$800.00 for it, Where am I going to get \$800.00 from?

It is ridiculous. If you want to move that compensation Act into the 20th century, I challenge you to go over to Sweden, Germany or Holland or Denmark and copy their Act and bring it here. We wouldn't have to have the meeting here.



July 17 - 15

MR. BIGGIN: The next speaker will be Pat Stanslow, from the Injured Workers Association of Welland District.

MR. STANSLOW: Good morning ladies and gentlemen of the committee. My name is Pat Stanslow. I am with the Welland District Injured Workers Association.

I am happy to say that we are pleased with some of the improvements in Bill 101. This morning we are going to speak on some of the negative points that we feel will help us.

We do not believe that the Canada Pension should be deducted from supplements that are paid to any family or person who is on compensation. Even with the C.P.P. benefits, W.C.B. pension benefits and supplements, you are still not in equal position unless the income level is higher than your net wages. Mileage for looking for work, for future employment, should be above net level, as this is not a usual expense. A less stressful environment is conducive to promote a progressive attitude in the injured worker, and his family will be more supportive. Employers are more inclined to hire happy persons than ones looking and feeling depressed and beaten. This is the time the Board should be very supportive to allow the injured worker the maximum in opportunity.

In regard to the survivors benefits, the families now in this position have been sliding into a welfare situation gradually, losing their possessions before their children are self supporting. These families should be included in the proposal of



July 17 - 16

a combination of lump sums and monthly benefits as set out in section 36 of the Act. This benefit should be based on 75% of the gross, or 100% of the net.

Once all the children are in school, or upon request, with exceptions for special situations, the survivor should be encouraged and provided with a means to become rehabilitated, educated and assisted to a self supportive position in the area of employment.

In the area of administration and appeals, the Chairman of Appeals should be removed from membership in the Corporate Board. This is a conflict of interest and the appeals procedure should be at an arms length transaction to promote just decisions. The Chairman of Appeals should not be prejudiced before or against the injured worker, and should be as independent as a judge in the judicial system. He should not be swayed by the information he may have heard during the meetings of the Corporate Board. It is important to give each side the opportunity to have a balance of representatives to represent the balance of employers and employees, the Workers' Compensation Board, the Department of Labour and an independent medical person as part of the Appeals Tribunal. The Industrial Disease Panel should also be constructed by various medical experts, employment, employee, the Department of Labour and the Board.

In regard to the process of establishing the payment rate, 75% of gross is preferable to the 90% of net. The best



July 17 - 17

5 solution is to use 100% of net as the earning base. By removing the financial stress involved with being an injured worker, the family and the injured worker do not fall into a depression that is difficult to surmount. Many families are broken by the stress of loss of health, loss of income, loss of security, loss of a way life and often the loss of the family from the pressure felt by these losses.

10 Bill 101 should respond to the requests from labour and injured workers for a two part permanent pension compensating workers on a basis for pain and suffering and a wage loss with full automatic indexing with positive support and supplement during the Vocational Rehabilitation Program, with guarantees in the legislation -- and it is you people who can bring this back to the legislature and get it passed -- that injured workers be allowed to return to their place of employment.

15 Weilers Wage Loss proposal of the White Paper would double all the stress and problems of the present system. Injured workers would be further economically depressed and we are concerned that the wages loss not be present in Phase II of these sittings.

20 There is no reason to leave the provision for automatic cost of living adjustments to Phase II. Injured workers have waited for many years for this consideration and much time and expense has been spent to provide the ad hoc increases. The tax payers' money could be more appropriately spent than it has  
25 in the past on debating this issue.  
30





July 17 - 18

Pension supplements in regard to the concept of old age supplements -- we believe that the age should begin at 50 years of age, as most employers are unwilling to hire a person who is over 50 years of age, especially one with a disability. A fair treatment would be supportive and conducive to provide a positive attitude to seeking employment in the hopes that a job opportunity may arise. The best solution would be to extend this concept to all qualified injured workers, due to the combination of disability and socio-economic factors such as age, language, education and geographic location problems.

A fine should be levied to employers who do not meet the provisions of the Workers' Compensation Act and Occupational Health and Safety Act. The penalties should be set fines that increase each time the employer does not meet with the Act. Employers should have a blanket protection for their negligence. Where a serious willful misconduct situation prevails, and after a specific number of offenses, the employer should lose his option to be covered under the Workers' Compensation Act. The Act was designed to assist employers avoid a legal action and remain in a secure position to promote security to all workers. All injured workers should not be penalized by the few employers who are presently abusing the laws and creating a bad reputation for all employers.

It is important that employers understand that the definition of "handicap", as set out in the Human Rights Code, is



July 17 - 19

defining an injured worker or disabled worker to whom Workers' compensation Board benefits were to be presently paid. A "no reprisals" clause should be built into the Workmens' Compensation Act.  
Thank you, gentlemen.

MR. CHAIRMAN: Mr. Stanslow, a couple of members would like to ask you a few questions. Mr. Laughren, first of all.

MR. LAUGHREN: Thank you, Mr. Stanslow, I believe that the unemployment levels in the Welland area are low or high?

MR. STANSLOW: Very low.

MR. LAUGHREN: The unemployment?

MR. STANSLOW: High. There is no work whatsoever.

MR. LAUGHREN: I represent an area in the Sudbury basin where we also have very high unemployment. I wonder if you had experienced any increase in the problems of rehabilitation -- getting workers on the rehab supplement -- as the unemployment levels went up -- as more and more people became unemployed in your community?

MR. STANSLOW: I can relate my own case on that. I was injured in 1979. I had both legs smashed up at General Tire in Welland. They have been promising me rehab since I came out of the hospital in 1981. At present -- well, for the last year and a half -- they have been saying, "Yes, we are going to send you to school. We are going to retrain you." As of yet, that has not happened. The only reason now they have got active with me again is because I am affiliated with the groups and I am a member of



July 17 - 20

an executive of the board in Welland. In the last couple of weeks they have been calling me -- "Well, we are trying to get this." They sent me the right tests. I have done this. I have been paid. I have been accepted. But still, nothing from the Compensation Board.

MR. LAUGHREN: What is your level of disability?

MR. STANSLOW: My level? 11.5%. Right now I get \$138.00 a month from the Compensation Board. I get \$321.00 from Canada Pension. And now they are saying that they can't pay me supplement because I am receiving Canada Pension.

MR. LAUGHREN: That is correct.

MR. STANSLOW: When I was injured, I spent 18 months at the Workmen's Compensation Hospital because I was in a wheelchair. I was back and forth, back and forth. It was them that told me to apply and go on Canada Pension. Because the Board told me to apply for Canada Pension and receive Canada Pension -- now I am being penalized for it.

MR. LAUGHREN: And of course, they pay less.

MR. STANSLOW: That's right.

MR. LAUGHREN: Is the Canada Pension you are getting directly because of the injuries to your legs?

MR. STANSLOW: Yes.

MR. LAUGHREN: So, they regard you as totally disabled?

MR. STANSLOW: My doctors regard me as totally disabled. And the Board gives me 11%. This is another reason



July 17 - 21

why we have to have an independent tribunal of doctors, rather than the Board doctors. Because I go down there -- I have orthopaedic problems. When I get examined by a gynecologist -- what does a gynecologist know about orthopaedic?

MR. LAUGHREN: I wouldn't guess.

MR. STANSLOW: I wouldn't either.

MR. CHAIRMAN: Mr. Watson?

MR. WATSON: In your presentation, one of the points that you make -- you say that if an employer is guilty they should lose their option for the Workers' Compensation. What is your alternative there? It seems to me you are going to penalize workers if the employer can't get the workmens' compensation. I realize that you are not satisfied with the system, but surely if the employer doesn't have any workmens' compensation, how are those workers going to be covered?

MR. STANSLOW: They should be covered by insurance, if the employer isn't going to live up to the rules and regulations of the compensation Act -- because they are not doing it now anyway. They should have a blanket coverage.

MR. CHAIRMAN: Mr. Gillies?

MR. GILLIES: Again, on the last page of your brief, Mr. Stanslow, you say that employers should have a blanket protection for their negligence. Do you mean by way of insurance against their own negligence?

MR. STANSLOW: Insurance, sure. Against their





July 17 - 22

own, yes. You get hurt. You have an option. You can go compensation, or you can sue.

5        MR. GILLIES: So, it is almost a reinsurance. If they had insurance in lieu of W.C.B. there would be a reinsurance against their own negligence?

MR. STANSLOW: Against their own negligence, yes.

THE CHAIRMAN: Mr. Lupusella?

10        MR. LUPUSELLA: Yes, I have another question in relation to your C.P.P. It is my understanding that people receiving C.P.P. are not penalized by the Board in relation to the rehabilitation process. Maybe the Minister can give us an assurance -- because we raised the issue in the legislature, and 15 it appears that the Board either has to change the policy, or maybe they did change the policy. What is the double standard? Are they penalized, or they shouldn't be penalized. Because I think a lot of injured workers are affected by this particular problem.

20        MR. CAIN: My name is Doug Cain and I am with the Workers' Compensation Board.

      I am sure that probably all of you are aware of but I will explain. Today, if you are to receive a supplement, 25 you are referring to, and if you should have received C.P.P., it is true -- C.P.P. is a bar to you receiving that supplement and it is not given to you. Just to briefly explain --

30        MR. STANSLOW: Could I say one thing to you first? Why does the Board, when you are in your rehabilitation hospital



July 17 - 23

or what they call a Mickey Mouse Farm -- as far as I am concerned, because they don't rehabilitate nobody -- why do they stress that if they know that a person cannot return to it? Why do they stress that this person apply for Canada Pension, when they know that if he didn't apply, the Board would pay him his supplement, which is going to be a hell of a lot higher than the measely dollars you get from Canada Pension. Why do they stress this?

MR. CAIN: In any specific case, I honestly can't answer that question. I don't know why they specifically tell you and not someone else. But I can tell you the overall policy.

A number of years ago, in the 1970's I believe -- Mr. Lupusella, you may remember this -- the Board was reminded on a number of occasions that when we didn't pay benefits, we did very little for injured workers to assist them in locating other benefits that they might be entitled to under different programs. And it was at that time the Board chose to begin explaining what other benefits, what other programs, plans -- both Federally and Provincially -- were available. I can appreciate your point of view. I am not being critical in the least. But I am simply saying, that is how it all began -- that we began explaining other programs to people. I can tell you the general policy; but I cannot, of course, say why in your case they might say that you should go for C.P.P., if in fact you are entitled to a supplement. I don't know why they would do that. I can't imagine why.

The only other thing that I just want to explain is



July 17 - 24

that under the proposed changes, we will make C.P.P. -- or the Government -- will make C.P.P. an offset to a supplement. Otherwise you can receive the supplement, but C.P.P. will be offset. Now, if and when that legislation is passed, you existing injured work will have the same right. I am not saying whether you agree with it or not, I am just explaining the policy as I have read it.

MR. STANSLOW: Why was it up until 1983 that a person that was on compensation and was receiving Canada Pension was still entitled to a supplement, but then the Compensation Board, with no legislation being passed or nothing, just out of the air pulls it out and says, "We are going to interpret this another way now." And they cut it off.

MR. CAIN: You are referring to the supplement that we were paying to "older workers"?

MR. STANSLOW: "Any workers" that were looking for employment.

MR. CAIN: And you are saying that if they were receiving C.P.P. we were continuing to pay ---

MR. STANSLOW: They were continuing. And then all of a sudden ---

MR. CAIN: Until June 1983? The only change in the policy in June of 1983 related specifically to older workers ---

MR. STANSLOW: I beg to differ with you. I am not an older worker. I am 42 years of age.

MR. CAIN: I don't know why you were receiving it.



July 17 - 25

The policy has always been the same in that regard.

5        MR. STANSLOW: I have letters right from your Board that say they have changed their policy. They have changed it. It wasn't changed through legislation or anything. They changed their policy. They cut off all supplements if you were receiving Canada Pension, regardless of your age.

10        MR. CAIN: I am sure that there are a number of individuals here today, who before June, 1983, received Canada Pension Plan and had their supplement cut off. I am certain of it.

15        MR. STANSLOW: I am asking you why it was cut off without anything being passed in the legislation.

20        MR. CAIN: I am simply saying that the policy didn't change in that way in June of 1983. I would be more than happy to discuss this with you later, but I am saying that the policy didn't change except for older workers.

25        MR. STANSLOW: I think there are a number of cases here that know the policy changed.

30        MR. LUPUSELLA: Mr. Chairman, I think that when the Board appeared before the committee of the legislature, the Resources and Development Committee, we got an assurance from the Chairman -- and those questions had been raised in Parliament -- that people receiving C.P.P. shouldn't be penalized for their supplement pension, because the person is eager to go back to work and they are willing to cooperate with the rehabilitation department. If some





July 17 - 26

day that injured worker finds employment, of course he has to give up his C.P.P. So, the C.P.P. shouldn't be an obstacle for the Board to cut injured workers' benefits. I think that this policy should be clarified.

The other problem which has taken place is in relation to a particular section of the Workmens' Compensation Act. In your particular case, you told us that you were presently receiving 11.5% disability, which means the Board is applying a particular section of the Workmens' Compensation Board Act which says,

"Where the impairment of earning capacity of the worker is significantly greater than is usual for the nature and degree of injury, the Board may ... "

And I want to stress "may" -- not "must", but "may".

" ... supplement the amount awarded for a permanent partial disability for such period as the Board may fix, unless the worker ... "

And there are particular clauses ... .

Now, this is a discretionary power which the Board has, either to award or reject a supplement pension. They have the power by Statute. It is unfair. That particular section must be changed. The Minister is aware of that and I hope that he will take action to change that situation.



July 17 - 27

The final point which I would like to make is that in the content of your presentation you clearly stated -- and we agree with that -- "We do not believe that the Canada Pension Plan benefits should be deducted from supplements, as your family life continues and it has the same expenses to meet ... " and so on. We agree with the principle. We make one particular suggestion. The C.P.P. pension or deduction from the Workers' Compensation Board should be deleted from Bill 101. And as you stated, there will be a Phase II, or reshaping of the Workers' Compensation Board. We invited the Minister to delete this particular section until Phase II will be introduced in Parliament, and we all have an opportunity to find out the total package of benefits given to injured workers, without penalizing the old injured workers -- that they are presently receiving meagre pensions. Do you agree or disagree with that?

MR. STANSLOW: I agree with that.

MR. LUPSELLA: Mr. Chairman, I don't have any other questions.

MR. CHAIRMAN: Mr. Laughren?

MR. LAUGHREN: I will be very brief, because we want to hear from the injured workers this morning.

You are probably the best example of how the Board operates whereby the reason they cut off supplement is they say that you are totally disabled, therefore you are not eligible for a rehab supplement, which would get you back into the work force,



July 17 - 28

because you have declared that you are totally disabled by getting  
C.P.P. At the same time, the Board uses the C.P.P. for that purpose  
yet won't use the C.P.P. to accept the 100% disability rating. I  
5 I think where the Board has gone wrong -- and I am not trying to  
unfair and put the Board in an untenable position here this morning  
because it is a room full of injured workers -- but I think what  
Board has never dealt with straight is how they can use Canada  
10 Pension in one sense -- to say that when you are getting it you are  
totally disabled -- but not use it in the other sense ---

MR. STANSLOW: Where they give you 11% or whatever

MR. LAUGHREN: Right. I think that is the question  
15 that I hope you will pursue with the Board.

MR. FARQUHAR: We don't want to belabour this point  
but there is a letter here, dated June 22, 1984, from the Chairman  
of the W.C.B. where he is responding to our request that they  
20 rescind this policy about Canada Pension and supplements. He  
states:

"When the Bill is enacted ... "

-- meaning Bill 101 --

25 "... the Board will of course amend  
its policy to conform with the new  
legislation. I trust this will resolve  
the association's concerns."

30 We are telling you this morning that this Chairman of the W.C.B.  
has kept us waiting since September of 1983 with promises of a le



July 17 - 29

5 opinion on this matter, then reneging on those promises, then making  
the promise again, and then reneging on it again -- and then this,  
where he says that when the Legislature orders him to do it, then  
of course he will change the policy. That is very generous of him.  
We are not, in any way, considering that a resolution of this problem.  
This room is probably half full of seriously disabled workers on  
C.P.P. They are in a total bind. If they go off C.P.P. they may  
10 lose it forever. If they stay on C.P.P. they can't get any income  
support from the Board through rehabilitation. The Board is keeping  
these people in a desperate situation, in I think a most cruel  
and unconscionable way. We hope that if there is one result from  
this committee, you will urge the Board to immediately rescind this  
15 policy and let people get their C.P.P. and supplements, as  
obviously even Bill 101 suggests.

20 MR. BIGGIN: Thousands of workers are affected  
by this specific aspect of Board policy. I think that since the  
recommendations in Bill 101 are to remove C.P.P. as a bar, then I  
think that as a sign of good faith, that not only the committee  
should put it forward, but I think the Minister of Labour and his  
office should consider this, and I also think the representatives  
25 of the Workers' Compensation Board. Bill 101 will not be enacted  
until January of 1985 at the earliest. This is six to eight months  
that injured workers are going to have to exist under this catch-22  
situation. I think it is time, and we have made it very clear,  
30 that there is a clear statement that C.P.P. will not be a bar. It





hasn't been in the past. It only was brought to the attention of the Board by Professor Weiler, who was concerned about stacking. And I think that it is very clear that the injured worker is not going to get a windfall from collecting C.P.P. and a supplement.

So, I would urge the committee, the Minister and the Workers' Compensation Board, to consider this as a sign of good faith to reverse this policy right now -- not wait until the Bill is enacted.

Our next speaker is Rosario Agosta from APIO.

MR. AGOSTA: Mr. Minister and members of the jury, good morning. And thank you for giving us this opportunity to say something, because we just say something from our experience or the other peoples' experience. We have been injured ourselves. We have personal experience. Participating in our organization, we have the experience of thousands of people who have been injured for a long, long time and have never had any justice.

At this point, I want to say something regarding the old claim in the Bill 101. There is nothing mentioned regarding the old claims. As myself, I have been injured from 1968 -- 16 years I am out of the work force. Other people, they are in the same suit. We have seen nothing changed or mentioned regarding the old claims, unless the 5% on the pension.

I believe that 16 years ago, or 20 years ago, the wages were different. The cost of living was different too. So that is why we are claiming the cost of living which we never saw



July 17 - 31

Because if we compare our pension -- the old pensioner -- there is nothing to compare with today, the cost of living. I can say something with regard to myself. 16 years ago, I was on the ceiling of the Workmens' Compensation. At that time, it was close to \$5,000.00 or \$6,000.00 a year. Now it is over \$25,000.00 a year. But my pension, as the other injured workers' pension, is based on the wage of 16 or 20 years ago. That is no good. That is discrimination.

We ask you to look into and bring up the pension at the same level, without no difference. Because we have to pay the bills of the gas, the property tax -- we have to survive the same as the other who receive the pension today, or who makes \$600.00 or \$700.00 a week, and we are unable. I myself, as the others, I have to collect two month's pension from the Workmens' Compensation to pay one month of the gas bill. So, we ask you to do something to bring up our pension to the cost of living. In this past year when we see something increased on pension, there has been all the time something less than the real cost of living. That is why we accumulate a distance more and more every year. That is why when I receive 20% of a pension, I get \$185.00 a month. That is ridiculous. Other people who have been injured just a few years ago, or last year, they will get almost double of my pension. And I have the same right to survive as the others.

I want to mention another thing. The injured workers who received a pension, once they die -- because they have



July 17 - 32

to die; everybody will have to die -- the pension must go to the survivor, as the other pensions do. Old Age or Canada Pension, will go in part or all to the survivor. Workmens' Compensation - once the one who receives the pension, the injured workers who receive the pension pass away, the pension finishes there. The family, the wife, has nothing to collect or to support. As the Canada Pension, they give the pension to the survivor. The Old Age Pension would be the same if the wife doesn't receive Old Age. But the Workmens' Compensation doesn't receive anything once they pass away.

So please, look into a try to help, because we are human beings and we have the right to survive like other people.

MR. CHAIRMAN: Mr. Agosta, will you come back to the microphone? Mr. Lupusella has a question.

MR. LUPUSELLA: Thank you, Mr. Chairman.

Mr. Agosta, you told us that you got injured in 1968. How much were you making at the time of the injury -- not per hour; the total amount of money per year?

MR. AGOSTA: Around \$6,000.00.

MR. LUPUSELLA: And when you got injured, how much were your weekly benefits?

MR. AGOSTA: \$91.00.

MR. LUPUSELLA: With Bill 101 -- and I am talking about new injury -- the maximum earnings recognized by the Act is \$31,500.00 per annum, which means, as you stated in the course of



July 17 - 33

your presentation, they will get more pension or more supplement pension and so on, which is almost equal with the supplement pension to that amount -- more or less.

5 In your particular case, and you well stated that Bill 101 doesn't do so much for old injuries -- and you are right -- and not only that, it is penalizing old injured workers, the old injuries, because C.P.P. will be deducted from the supplement pension. 10 In your particular case -- I am not sure if you are receiving C.P.P.?

15 MR. AGOSTA: No, I don't receive it, because I like to do something. But if I have to say something about that, I was receiving a little supplement in the first year when I tried to do some vocational work. But as soon as I met the amount I was making before the accident, they cut the supplement. That was after five or six years. That is not right, because after five or six years, the dollar was at 75¢. So, I was entitled to receive something.

20 MR. LUPUSELLA: The point which I am trying to say, and I hope that we are able to convince the Minister to change a little bit the ideology of Bill 101 on that particular section of C.P.P. -- you got injured in 1968, which means that you are not eligible for C.P.P., because it was enacted in 1966.

25 MR. AGOSTA: For two years.

30 MR. LUPUSELLA: But if we are talking about other injured workers who got injured, maybe in 1971 and are receiving C.P.P., the level of the weekly benefits received by the Compensation Board was in the range of \$112.00 per week. These





people not only got small pensions as a result of their permanent disability, but also they are penalized in case they will be receiving supplement pension and if they are receiving C.P.P., because it will be deducted.

I think this is cruel and we share your concern.

MR. AGOSTA: About those things you say, and with your permission I want to say something. In many nations there is a person by law -- the employers have to hire again the same people who get injured. But here for many times, and for so many years, our injured workers have asked to be like that. But never, never, we see anything like that.

If I remember, just a few years ago, after two years I was injured and I tried to do something, I was sent to my employer to ask for a light job. You know what happened to me? He pointed a finger to the dog, because I was a watchman. That is what I can do. He pointed the finger to his big dog and said, "There is the watchman. He costs me \$6.00 a week. You cost me \$130.00 a week.

MR. LUPUSELLA: Mr. Agosta, do you agree with me that even indexing, even though it is a good thing that should be implemented as soon as possible, will not solve the problems of thousands and thousands of injured workers who got injured with permanent disabilities 10 or 15 years ago. And in order to increase their pensions, not only do we need that, but also we need a full revision of the clinical rating system which should be retroactive and incorporate all injured workers over the past years?



July 17 - 35

MR. AGOSTA: Yes.

MR. BIGGIN: Our next speaker is Ivan Bastarache.

MR. BASTARACHE: Good morning, brothers of the  
Injured Workers Union -- and sisters -- and to the Board up there.

My voice may get a little loud sometime, but don't  
mind. I want to ask a question of that fellow from the Compensation  
Board.

MR. CHAIRMAN: I am sorry. He is only here to explain  
policy. He is not a member of the board.

MR. BASTARACHE: I got a question to ask him. I  
think the rest of you should be pretty interested in it yourselves,  
too.

For Bill 101, I would like to see them raise the  
Canada Pension up and the pensions of the injured workers -- up to  
the standard of living, so that people can make a living. Myself,  
I have gone through heck with this here back since 1962 or 1963.  
I have had two operations. I have got two files, everything. They  
are only paying me on the one file. I have gone to their  
compensation hospital, I have taken all of their treatments. I have  
gone on their job training, everything. Which was promised to me a  
job when I was done. I got no job. They said, "Go to Manpower". I  
went to Manpower. Manpower laughed at me. They stood there and  
laughed at me. They said, "Go on back down to the Workmens'  
compensation Board. That is their problem. No ours." Why should  
the Board retrain us for a job and then say, "Here, go sit down. Take



July 17 - 36

your Canada Pension. We don't want to be bothered with you no more

That is wasting tax payers' money. Our money too. This  
here has cost me a marriage, a separation, and it has cost me a lot  
5 things. I have one file down there since back, I would say, 1967  
They don't even want to look at it. Every time I go down I get  
the run around. The run around, "I can't find your file. I can't  
find your file." Meanwhile, some jackass down there was sitting  
10 it. They are sitting on the file. They say they can't find it.

They owe me back seven years for the operation on  
my hip plus the pension. They have not paid me. I have got a meeting  
coming up with the Compensation Board, with Mr. Biggens here. They  
15 still don't even want to look at that file; they shake. Well, why  
should they say it to me? "Go take the training. We will get you  
a job." Then they send you back to Manpower. They don't get you a  
job at all. I have gone three times to work for myself. Employers  
say, "No. We do not want you. You are an injured dog."

You got your people up there working for the Labour  
Board and everything. They can't even find us work. Who is going  
to hire somebody that is injured? Myself, I am a transport driver  
25 Husbands Transport, owned by CN. I had a truck accident. I went  
back 21 times. Finally they said, "Get lost." They don't want to  
pay nothing. I have not quit my job. I am still an employee of  
Husbands Transport. But they will not take me back on account of  
my injuries, because they are afraid it is going to get worse or it  
30 is going to kill me -- driving those 18 wheelers is a heck of a job



July 17 - 37

Yet the Board will stand back there and they will laugh at you and say, "Tough". It has caused a lot of suffering for a lot of people. That is why I want to see in Bill 101 that the Canada Pension is raised up, all the injured workers on it, and the pensions go up to so that we can live -- and cut the cost of living down for the injured workers. We didn't ask for these accidents. These are accidents a lot of us blamed on the companies. I know mine was blamed on the company and it was their fault, too. But we didn't ask for this here. But it is the main point I would like to get back and I would like to see it put in the legislation, too. If you have got two files down there, the Compensation Board has no right to take you off of one file and put it all on the one to pay you one when there was two claims -- and they are only going to pay you the one. That is what I would like to see in Bill 101. It is pretty good.

I went to COSTIs. I took a refinishing retraining course. There is a lot I didn't know about it. It is good. But what good is it to me. And then you have your counsellor at the Compensation Board say, "Stay home. You are done." What is the use? He is getting the bucks. He is passing that buck on. When is that buck coming in here? There is my dollar telling him to tell me to stay home. And we got kids going to school and everything.

I got a raise on my pension. Beautiful. What good did it do for me? The cost of living went up, the rent went up, hydro has gone up. I brought a little hamburger with me. That is





July 17 - 38

my dinner today. I don't know what I am going to eat tomorrow.  
I got to go next tonight when I go home. I got to bum some milk  
and bum a couple of bucks to see that my kids get at least a pie  
of toast and some milk in the morning, to go to school. I got o  
just starting highschool and the other ready to start next year.  
am I going to clothe them. I got to pay for all my own prescrip  
The Board will not pay for it. I got to pay for my kids'  
prescriptions. I got to pay for her glasses, everything. That  
coming out of my pocket. I got to borrow and steal like a dog.  
That is not fair to the injured workers. We didn't ask for this  
And the companies they just sit back and they laugh at you. It  
not right.

That is all I got to say. I would like to see yo  
put in there that everything is up. If you are going to have  
courses for the injured workers, why put them through a course  
they cannot find a job or nothing. Because to me, the training  
and everything is good. But they are just reassessing you for  
pension and saying, "Here. That is what you are worth. That i  
what you are getting and that is all you are going to get." Th  
is on the job training. You call that on the job training? I  
not even getting the equal part of my pension to compare to my  
wages at Husbands transport. There is \$24.00 difference, and  
they don't want to pay it. Why don't they want to pay it? It  
not their money. It is my money. It is money I paid in there.

That is all I have got to say.



July 17 - 39

MR. BIGGIN: Tony Falcetta?

MR. FALCETTA: (Testimony in Italian)

MR. FARQUHAR: I took notes of what he said. This is Mr. Antonino Falcetta. He asks you to excuse him for speaking Italian. The Board told him to learn English, but he could always work before without English.

He says, "I have two points." First he was injured in July, 1973. The Board sent him to look for light work. He says, "They sent me to Canada Manpower. They didn't want me there. No one wanted me. They said, "No job, come next time."" Then he went to the W.C.B. and the the W.C.B. counsellor said, "You don't have enough money? Sell your house." He said, "I came here to ask for light work. If I wanted to sell my house, I could go to a real estate salesman. I wouldn't come to you."

He recounted a meeting he was at with the former Minister of Labour. I don't know which one -- it could have been several years ago, -- where the Minister of Labour said, "If you don't have enough money, you know, there is a welfare program in Ontario." "Why should I go to welfare? The Board has to pay me. Why can't they give us our rights? Why don't they have the courage to give us our rights?"

He applied for C.P.P. and they said he didn't have enough contributions -- a very common problem. If you are on compensation a long time, you can pass the time limit. If you apply and get it, you lose your supplement. They said, "No C.P.P. for me."



Mr. Falcetta says, "Why can't we have cooperation between the W.C.B. and C.P.P. to give all injured workers at least the basic protection of C.P.P. And once again, excuse me for speaking Italian."

5                    MR. BIGGIN: The next speaker is Mrs. Ramani.

MRS. RAMANI: I am Mrs. Ramani. The first time, excuse. I don't speak very well the English. But I have to try it how much I can.

10                   Four years ago, I was at Compensation Board. I had a good job before and I get good money. I have an injury now. They pay me two years, not too bad. Like the same thing when I am working. But now they cut pay. Please, I need help. Who can support, just for one person, \$1.00 a day -- \$40.00 a month pension. I got to pay pension, but \$1.00 a day? Every three months I went to the doctor. I get injection -- \$60.80, exactly. And I say, "Who is going to pay my bills? The needle and the prescription and everything?" I have a very bad life. I am a half person, living for the kids now. Very bad. I don't feel sorry for myself. I feel sorry for the kids.

20                   Another thing, before two years ago, I went to the Compensation Board and I had a counsellor. I said to the counsellor, "I am looking for a job." And he said, "I will, I will find job for you." And I went home. They closed the file. And the letters came, it was a surprise to me that they give a pension of \$40.00. How come from \$200.00 a week and then I go to \$40.00 month? Who is going to live like that?



July 17 - 41

5 The second time, I leave that counsellor. They  
give me another counsellor. She come every month, every week,  
every two weeks. She phones me. She phones me very, very bad.  
"You have to look for a job. You have to look for a job. You  
have to look for a job." And I go crazy. And I said to her, "Please,  
I am looking every day for a job. But I don't have enough money  
to pay for the bus ticket. If you want to help me, take your car  
10 and take me to the factory. I will work."

15 She has been to my house. My husband is in the  
family room and she cried like a baby. She said to me, "I can't  
help. I closed the file." The file is very, very easy to close.  
But you have to help the people.

20 Another thing -- I found jobs -- too many jobs -- if  
you want it, take it, the phone number, the name of the factory --  
I have everything here. I find a job in four or five places. I  
start one job for two weeks. They said to me, "Where is the  
application?" When you are looking from the Compensation Board,  
go home. "When I have a job, I will call you." I am waiting and  
waiting.

25 I find another job. Three days -- "Go home". I  
find another job. Three weeks -- where do I have to go? Where  
do I have to go?

30 My husband is on compensation, too. I was so  
upset, I went to the Compensation Board. Another thing, they are  
supposed to help the people who no speak very well English and don't





July 17 - 42

5 understand. They understand and it is very easy to send the paper  
If you want, read these letters and complain to me again. Nobody  
cares for the people. But when the people are upset, they are go  
to say everything.

Nobody cares for the people. But when they are up  
they are going to talk about everything. They are going to give  
change the people.

10 I get the letters last week. I go to my counsellor  
and I said to her, "Please read these letters." She said, "You  
have your son. No." "I don't have my son as counsellor. I have  
you as counsellor." She said, "Not any more." "Why?" I said?  
15 "Not any more. Get letters and go home." Where do I have to go?  
Please tell me where I have to go. I am going to go. If you say  
"Go kill yourself," I will go to kill myself. For the government.  
Just for the government. I don't like the \$40.00. It is a shame  
20 to shame the people for \$40.00. A shame.

I can't speak any more. If I could speak my language  
I have lots of things. But I can't speak more English. But still  
I need help.

25 I went to the doctor at Canada Pension. They said  
to me, "You have to pay supplement." I make too many times appear  
for pension, for supplement. Nothing. Nothing. Every day. All  
over Toronto I filled out application, and nobody calls me for a  
job. They look at the application -- I am from the Compensation  
30 Board. "Go home. We are going to call." Two years. Where do



July 17 - 43

have to go? Give me one idea, please, if I mistake or something.  
I need help.

MR. CHAIRMAN: Mr. Lupusella?

MR. LUPUSELLA: Mrs. Ramani, you told us that you  
are presently receiving \$40.00 a month pension. Would you be  
kind enough to give us the letter which was sent to you by the  
Board?

MRS. RAMANI: Sure.

MR. RAMANI: I am the husband to the wife. I am  
six with an injury. I want to ask you, where these problems they  
come from -- from the Compensation Board, or you people.

MR. CHAIRMAN: What was the question?

MR. RAMANI: This is my wife. I have got now six  
years an injury. Where does the problem come from? From the  
Compensation Board or somebody else?

MR. CHAIRMAN: The letter?

MR. RAMANI: Not the letters -- the problem. I have  
the problem. They spoil the family. They come every day to list  
five things. We got no clothes, no heat, no nothing. I have a  
problem with my counsellor. They told me -- I left my home since  
1961 -- almost 23 years I was working very good. Now, I am no good.  
I am like a dog. I am like a dog. The counsellor said, "Mr.  
Ramani, you sell the house." I said, "Why? At the time I bought  
the house I had money. Now to sell, for what?" He said, "You  
better go to welfare; they will support you." Who is going to



July 17 - 44

support four children? Nobody. Now I am no good.

That is why I want to know from where the problem comes from.

5                    MR. LUPUSELLA: Mrs. Ramani, if I may, I read the letter dated June 26, 1984. On the letter, it states that a job was offered to you with an employer. What kind of a job did the Board or the employer offer you?

10                   MR. RAMANI: The Board didn't offer no job. My wife found the job over here on Bay Street. That was cleaning the walls for three weeks. I don't know what happened after. You have to explain.

15                   MRS. RAMANI: (In Italian)

MR. RAMANI: Yes, the counsellor found the job.

20                   MR. LUPUSELLA: It is also noted that you were provided with what was deemed to be very suitable employment with your accident employer. In fact, the position was specifically designed to accommodate you, but you fell asleep on the job and as such were released by your accident employer. What kind of a job was that?

25                   MRS. RAMANI: When, the first time?

MR. LUPUSELLA: Yes, the first time.

MRS. RAMANI: The first time -- the factory.

MR. RAMANI: Cooper Company. Packing stuff.

30                   MR. LUPUSELLA: You were released by the employer the first time a position was offered to you. Did you receive a



July 17 - 45

assistance after that from the rehabilitation department of the Compensation Board?

5        MR. RAMANI: No, she didn't. She didn't receive nothing.

MR. LUPUSELLA: Thank you, very much.

MR. BIGGIN: Annie Copps?

10       MS. COPPS: Good morning. I want to talk to you about the rehab service. It leaves so much to be desired. It falls down on the job and it is really doing so little to help us injured workers.

15                I was injured two years ago. I have a spinal injury. I wear a brace and I wear a very marvellous little machine that eases all my pain except in my leg. I have reached the stage where I come under "rehab". Rehab have done nothing at all to help me. I have been in the hospital with very, very kind people. And I know they did their very best. But of course, the hospital can't  
20       get me back to work. I looked to my counsellor to help me get a job. He has done nothing at all -- made no suggestions. He did say to me, "Go to the unemployment insurance office."

25                The help the unemployment insurance gave me was that they typed up a resume for me to take around with me to the various employers. I am very grateful for even that small piece of help.

30                However, I have found a job myself. No one helped me get it. It took three months of going out every day. I am very, very glad that I have got the ability to work. But there is one





July 17 - 46

that Compensation could have done. They could have bought me a  
Metropass. Just a little thing to help me. Going out to four  
five places a day asking for work, low profiling my injury -- be  
5 working is something that I intended to do. I told the counsellor  
this. I am told that because of my injury and because of my age  
and because of the job market right now, there is almost no chance  
of me getting a job. I did say to him, "I will get a job. Please  
10 give me a little bit of help." The amount of work that Workmens'  
Compensation does pay me each week does not give me the money to  
go on bus rides every day. "Will you give me enough to buy a  
Metropass?" The answer from Workmens' Compensation is, "No. We  
15 not pay bus fares in Toronto."

Rehab needs improvements. The new legislation --  
have really got to work on it and do something for injured workers  
who are able to go work and who are lucky enough to get a job.  
very, very lucky. I did get that job. I did not get help from  
20 Workmens' Compensation. I got a lot of very well mannered people  
very, very nice to me. I know that they are tied by rules. So,  
am not going to criticize them for rules that they can't do anything  
to bend.

But make a rule that will help injured workers to  
get out and about to look for jobs. The amount you pay us each  
week is quite small. I am a single parent, and the amount had to  
stretch to rent, food, clothing, a young son who is hoping to go  
30 university next year, and pay TTC fares. And it is no joke. We



July 17 - 47

just asking to give us that little bit of help to get on our feet. We didn't want to be injured. We are injured. We need help. The new legislation has got to have some improvements.

5 Right now, what it does say is that Workmens' Compensation, when you reach the rehab stage "may" help us to get back into the work force. Couldn't you reword that to say "shall" help us?

10 I want to say something that I have not ever said like this before. Several years ago I was treated for cancer. It was malignant cancer. It was a very long and very hard fight between cancer and me. And thank God I won. But when I went out of that hospital, one thing that was said to me is, "Mrs. Copps, go  
15 for it. But avoid worry, avoid stress, don't get overtired." Workmens' Compensation, do you really think I didn't get overtired for three months walking the streets of Toronto looking for a job? This very, very strong person -- and I am quite able to look after  
20 myself and my family -- I went to my room at night and I cried. It wouldn't have done any good to come up to Workmens' Compensation and cried to you, because this was my problem. But when we have an accident, Workmens' Compensation is there -- it comes across  
25 to me as an insurance company for the employer. But you are there to help us -- we are the injured people. I am not complaining to you about the amount of money you give me each week. I have adjusted my budget to live within that income.

30 In about two weeks time I will draw my own pay cheque,



July 17 - 48

and hopefully things will go up and get better. But there are a  
awful lot of workers that are going to come up behind me, people  
here, that want to get a job. You have got to do something to  
5 help them. There are not that many jobs around and in order  
to get them, it is no good picking up a telephone and saying, "A  
you hiring today?" You have got to comb your hair and put your  
lipstick on and put your best dress on. You have got to get out  
10 there in front of the employer and show him what you have got to  
offer and hope that you can get a job. But you can't do it if y  
are scratching for pennies in a penny jar, saying, "Have I got  
enough money to get to Etobicoke?" Or doing what I did -- getti  
15 myself out to Rexdale on a bus and walking home. Getting myself  
out to Scarborough on a bus and walking home. Because my  
counsellor tells me that Workmens' Compensation will not pay bus  
fares in Toronto. We desperately need an improvement in the reh  
services. We don't need people telling us that we are too old t  
20 get a job. Because I am not too old to get a job. I don't know  
they would say I am an older worker, or not. I don't feel as if  
am an older worker. I went out there with the intention of  
getting a job. And like hell, I got a job. But you didn't help  
25 me. I needed your help. I didn't need to go home so tired that  
I had to lay down and say to my son, "Will you make beans on toa  
tonight, for a quick supper?" I needed to have a sense of  
achievement. And I don't want to sound as if I am knocking Work  
30 Compensation. But if you are not going to help us, why have a



July 17 - 49

rehab service? What good is it?

So, what I am asking for is rewording. Please,  
we don't need that you "may" help us. We want you to tell us that  
you "will" help us. Thank you very much.

MR. BIGGIN: Thank you Mrs. Copps. Santina Tatangelo?

MRS. TATANGELO: (In Italian).

MR. FARQUHAR: I will just use her words.

"My name is Santina Tatangelo. I apologize. My  
English is like Johnny Lombardi's Italian. I hope we don't get  
sued.

I was injured in 1973 to my back in a furniture  
upholstery business. I now have a permanent disability. She has  
20% pension. 1974 was the first time that I tried to go back to  
work. Then they laid me off. There was no work. Then I tried  
to return to my old employer. They had a sign up: We need workers.  
I went to ask for work and they said, "No work for you. I only  
pay for workers with strong legs and strong arms." Then the Board  
sent me to three companies in a row looking for work. Each one  
went bankrupt. Then the Board sent me to a bakery. At the bakery,  
they had no lunch break, no coffee break and we had to eat while  
working. They said, "That's the rule here. That's how you do it."  
The Board found me that job. I only lasted one day.

Then the Board found me a job making picture frames.  
The boss sexually harassed me. I quit after a few days. I did not  
have to stand for that. Finally on my own, I found a job. It was a





light job making fruit pies on a line. I worked there two years. Then there was a general lay off because things got slow. They offered me heavier work in the freezer. It involved lifting 60 pounds and working with machines. With my bad back I could not handle that.

I had to go looking again for light work. The WC said that I had been on supplement too long. So finally, in desperation, I took a heavy job I never should have taken. It involved working 60 hours a week. After six weeks of this -- and can comment. This was a small meat packing place -- I developed a hernia from lifting to quickly a heavy weight. I have had two operations and a poor result. Until recently, I was on compensation for the hernia.

Now they say I have to look for light work again. We are tired, we won't stand for this discrimination. Our families are suffering. This law must change, not just for me, but for thousands and thousands of us. We have no supplements. We are tired. It is a discrimination.

We came here full of energy, happy, healthy and strong from our home country. Now we are sick, weak, tired, and our families are suffering. We are having arguments in our families. Give us justice."

MR. BIGGIN: The next speaker will be Jim Kennedy from Georgetown.

MR. KENNEDY: Mr. Chairman and members of the committee



July 17 - 51

I think my point has been brushed against and touched upon by someone already. The topic I would like to mention is the one about the appeal panel members.

5 I believe very strongly that in order for the appeal committee to have any kind of value in the eyes of a member who goes to it for a decision, I feel that the chairman of that committee must be a member -- and I said "must". I know the  
10 legislation has a lot of "mays" in it. But I say, must have a chairman of it who is acceptable both to the labour member, the Association of Injured Workers being one of those groups, as well as the chairman being acceptable to the member of the Board. I think  
15 that if that chairman is not a neutral member, someone who is not acceptable to both labour and a representative of the government, of Board in this case, I think the decisions of that committee, whether they get their information from medical or whoever gives them the information on which they base their decision, that  
20 committee really will not look very good. Its decision will not appear ... . I think the decisions of that committee will not appear just and fair if that chairman of the appeal committee is not a neutral person.

25 Bill 101 must, I believe -- and I know our association in Halton Hills feels the same way -- it must be a neutral person.

Thank you.

MR. BIGGIN: Our next question will be Walter Hyman.

30 MR. HYMAN: Yes, ladies and gentlemen. Yes, there is



July 17 - 52

one question to ask you, Committee, and it is simply this: is the Workmens' Compensation a protection for injured workers? Or are you a protection for the employers?

5 I don't really expect any answer right now from Mr. Committee, but I happen to be an injured worker myself. I have some experience with what the Compensation Board is all about.

10 We are here this morning to put us against the new legislation that makes against the injured workers like the differences between the new and the old. There is one simple thing that puzzles me. Are we getting any justice from this Workmens' compensation Board? Are we getting the run around? There is one more thing that puzzles me, too. Is there any recognition for the working force of society? I don't expect any answer, either. I yes, in some cases. But is there any recognition when a man is being hurt on his job, etcetera.

20 And there is again one thing that puzzles me. It is this: why don't you put the partial justice in the garbage and give us some justice for one and all and forget about this old and new stuff. I think there will be more harmony and better understanding between the injured worker and the Board.

25 Another thing, again, that puzzles me. It is this: if there was any justice from this Workmens' Compensation Board why have we got to come down here into this room to be interviewed like a bunch of aliens from another planet, as if you, Mr. Committee, doesn't know what is going down? I know there is nothing much

30



July 17 - 53

we can expect today or tomorrow. But if this society is about justice, then we would like someone to exercise, not only a word of mouth, and we would like that piece of white paper to be dumped as well. Do you know what I mean? Justice -- that is what we are talking about. J-u-s-t-i-c-e. Justice. Do you know what I mean?

Thank you, my Lords. Ladies and gentlemen.

MR. LUPUSELLA: Mr. Chairman? You are not expecting answers from the committee, but I have a few questions for you. Are you trying to tell us that Bill 101 is not doing any justice to old injured workers, therefore we have to hold Bill 101 until justice for all injured workers will be seen to be done?

MR. HYMAN: Well, as far as I have observed under new legislation, in verbal and what I have read, there will be a little partial justice for the new workers, but not the old ones. I think that is negative.

MR. LUPUSELLA: A lot of people appearing before us were not injured workers. The employers who appeared before us made the statement that the system is costing too much to them, which means that Bill 101 is going to increase their premiums in future years to come.

Are you trying to tell us with your statement that we should not proceed with Bill 101 until we are going to solve the problems for all injured workers first?

MR. HYMAN: I think you should dump it and come up with something more concrete. Justice for all; not only for the





July 17 - 54

new, but for new and old. That seems to me like partial justice. If you are going to deal with the people with partial justice, you will have have processions like this (sic).

5        MR. LUPUSELLA: Thank you very much.

MR. BIGGIN: Of course, you have a grand opportunity of giving justice to the old pensioners along with the new people who are injured after the Bill gets enacted. So, there is a solution to that question.

Vince and Maria DiPucchio?

MR. DIPUCCHIO: (Statement in Italian)

MRS. DIPUCCHIO: (statement in Italian)

15        MR. FARQUHAR: "We are Vince and Maria DiPucchio. I am Vince DiPucchio. I have had three injuries -- two in 1959 and one in 1962. My pay is based on those old injuries. I have 2% pension for my foot in one claim, 15% in another file, and the third file they will not recognize me. I have problems in my  
20 shoulder, both my knees and my foot. My pain is always getting worse. The doctor says I can't do anything.

      The Board says there is no work for me. They suggested I go out and look for my own job. They couldn't help  
25 me with my pain and they couldn't help me find work. I finally did find my own work -- private work, gardening and working on outside work. But I just can't keep it up. I have got too much pain I can't keep going."

30        "I am Maria DiPucchio. I am the wife of Mr. Vince



July 17 - 55

DiPucchio. I am not an injured worker, but I can feel the same pain he feels and the injustice he suffers. The doctors say they can't help with the pain. I am going to keep trying to help him. His knees just won't heal. The Board doctors say that there isn't much wrong with him. But if my husband is willing to work like a dog but can't do it, I have to believe my husband and not the Board doctor.

The Board doctors don't feel my husband's pain. The doctors want to see you flat on your back on the table, dead in your house, before they will recognize. I feel the pain of all these injured workers, these poor disgraced people, humiliated people, in this room. We need justice."

And just to comment -- almost all the people appearing before you today have a recognized pension from the Board. Nevertheless, I suspect they all share Mr. and Mrs. DiPucchio's feelings about the Board doctors. That change is pretty well absent from the Act. All we have got is a medical assessor at the very top. We would really like you, and we know they would really like you, to think very carefully about more that we could do about Board doctors. These people don't want any more Board doctors.

MR. CHAIRMAN: Mr. Lupusella?

MR. LUPUSELLA: Thank you, Mr. Chairman.

To Mr. DiPucchio -- we share your concern. We know that there are problems. These problems are affecting the families as a whole of the injured workers. But one thing I would



July 17 - 56

like to insure you, your typical case, which is so common among injured workers across the Province of Ontario, has been brought the attention of the Minister several times in the legislature. is a need of reform to take into consideration the problems of a injured workers, the old and the new.

By the way, you stated to us that you are not injured but you are suffering like your husband. A lot of families are falling apart. I told the Minister in the Legislature that a lot of Italian families are leaving the country. They are going back to Italy. I don't think it is fair, after their economic contribution given to this Province, that people should be treated like that.

MR. BIGGIN: Abramo Perricone?

MR. PERRICONE: (Statement in Italian)

MR. FARQUHAR: "My name is Abramo Perricone. I was injured in 1977. Bill 101, we can throw it in the garbage"-- I am translating this. It is very important you realize that. I am trying to give his words -- what he has to say. It may not please you. But I am translating,

"For we injured workers and pensioners making 15% pensions, \$150.00 or \$200.00 a month, with all the pain in our bodies and in our families -- and now they want to cut us off at 65 years. This is the politics of Davis and the other conservatives. But the conservatives dare to ask for our votes. Every citizen you represent, you Provincial and Federal MP's, Ministers, and MPP's, has given you their trust. But you betray us, conservatives."



July 17 - 57

We are starving, slaves. Now they want us begging on the streets of Toronto. But the WCB Chairman is doing well. He makes \$50,000.00 a year. But this is our money. They are living on our money, our blood. The law defends capitalism, not us who have spilled our blood at work. If you have the courage to ask for our votes, give us justice. Liberals and NDP are helping us. Ministers must guarantee at least \$600.00 a month to injured workers like me. Every injured worker must have the chance for light work. If the old company refused to take us back, we must get full pay. This is the budget that the WCB must present to the capitalists. For we pensioners who have spilled our blood at work, we must get full cost of living. For those who cannot work, we should get a good amount of money to live on -- \$600.00 to \$800.00 a month, at least. The Minister of Labour must present this budget to Mr. Davis.

We want justice -- social justice. Our contribution has been made. All these buildings, everything that has been built is full of our blood. Now we live on pills. We have a right to live a good life.

I have a 15% pension. You have given me 5%. This is two candies, two chocolats. I ask, could you live on two more candies or two chocolats? I get Canada Pension, too. How can I pay the rent with 15% and Canada Pension? The WCB says I have no rights. I have paid for my rights."

MR. CHAIRMAN: Mr. Minister?

HON. MR. RAMSAY: I was wondering if the interpreter,





who is doing just an absolutely marvellous job -- I stand in awe  
of his ability to do so -- could he explain to the gentleman that  
there is no thought of cutting the pensions off at 65. I really  
think that should be clarified while everybody is here today.

MR. FARQUHAR: (Statement in Italian)

MR. BIGGIN: I think it must be pretty obvious to  
the committee, that although a couple of you thought we have sta  
managed this whole thing, very obviously we haven't.

The next speaker is Alessandro Morlano.

MR. MORLANO: (Statement in Italian)

MR. FARQUHAR: "My name is Alessandro Morlano. I  
have been injured three times, the first in 1969. I have no ben  
at all. So, what is in this Bill for me? How can I live on \$84  
a month?"

I am just translating. I am not clear. I think  
maybe he has a small pension.

"In 1983 I was forced to return to work and I had  
another accident. Now they want some money back from me."

And there is a handwritten letter there.

MR. BIGGIN: The next speaker is John Jaisareesingh

MR. JAISAREESINGH: Good afternoon, ladies and  
gentlemen and members of the committee.

I got injured in June of 1981. I suffered with a  
broken pelvis. I was on Workmens' Compensation benefits, and th  
cut me off. I asked them to retrain me because I was a



July 17 - 59

refridgeration and air conditioning apprenticed mechanic. They refused to retrain me. They said I was fit to return to my original job. I returned to my original job. I couldn't handle it. I came back to them and told them the problem. Still, they refused to help me.

Up to now, I haven't received any benefit from them. All I have been receiving is a 3% disability pension. I asked them several times to help. Presently, I have completed my upgrading and I hope to enter college in September. Still, I haven't received any answer from them. I went to the Board many times and they said there is no indication that I need retraining. They said medically I am fit to work. The Board doctors say I am fit to work. That is where I stand right now.

I just wish that the services can improve there, because I think they are serving no purpose. They have no purpose there at the rehabilitation centre.

I am 21 years of age, and I don't think I can go and do a security job or janitor's job. I have a better personality than that. I wish to do something better than that.

Thank you.

MR. LAUGHREN: I wonder if I could ask a short question?

Did you say you were on a 3% disability pension?

MR. JAISAREESINGH: Yes. I was on 3%. And I asked them to commute it for me. That is what I had to do.



July 17 - 60

5  
10  
15  
20  
25  
30  
MR. LAUGHREN: I suspect that one of the problems is that it is 3%, because we have always had difficulty getting real service for people with low disability pensions. If in fact that is a problem -- the lifting -- and you can't go back to your original job, I can't guarantee anything of course, but I would like you to camp on the doorstep of the rehab department and stay there until you get some service from them, because you are entitled to that service.

MR. JAISAREESINGH: Thank you.

MR. BIGGIN: Antonio Spina?

MR. SPINA: (Statement in Italian)

15  
20  
25  
30  
MR. FARQUHAR: "My name is Antonio Spina. I put myself in the hands in the committee and the Minister of Labour to know we and our families are suffering. I was injured June 16, 1977. I fell 30 feet on construction. I injured my back and feet. I now have a 55% pension recognized by the WCB. I went to my own doctor and specialists. They recommended 100% pension.

Then I appealed to the WCB. They said I have got too much already. My counsellor sent me to search for light work to factories. Many secretaries said to me, "We have no work for you. How much can someone like you do?" This is true now. But before I came to Canada, and when I first came to Canada, I was healthy. I left my sweat on many work sites. I kept looking for light work, even in the winter. But finally, it got too cold and I was in too much pain. I told my counsellor that I couldn't



July 17 - 61

5 keep looking and for the first couple of months they didn't cut me  
off my supplement. But three months later they did. Then they  
wanted the money back. \$1,000.00. I didn't have the money. So,  
they commuted part of my pension. They commuted \$7.75 a month.  
And they say it is for the rest of my life. But if you calculate,  
that is lot more than \$1,000.00. How many times must I repay this  
\$1,000.00? This is what I want to ask. This is why we want justice.

10 They sent me to COSTI to learn on a sewing machine.  
I never did this work before. I always did construction. They  
said I could get sewing work at home after I finished the course.  
But after they kicked me out of COSTI, I never got the sewing work  
15 at home like they had promised.

This is what I want to say to the Minister of Labour.  
Try to do something to provide for us injured workers."

20 I have one comment here. Maybe it wasn't clear from  
the translation, because I just said what he said. He is complaining  
about the way they calculate a commutation of a pension, because  
it is a lump sum which is only worth about half what an inflation  
escalated pension would be worth in a lump sum. So he should come  
back if you want to ask him about that.

25 MR. LAUGHREN: That is exactly what I wanted to ask  
him about.

30 When that part of your pension was commuted, the  
\$7.75 a month, how much of a pension were you getting at that time?





July 17 - 62

MR. FARQUHAR: He was receiving a little more than \$300.00 a month then.

MR. LAUGHREN: My question is, did the Board offer instead of commuting a part of that pension for life -- did the Board offer to reduce the pension in order to get that \$1,000.00 which they claim was theirs? Did they offer to just reduce that pension, of \$10.00 or \$15.00 a month say, until the \$1,000.00 was paid back, or did they just commute it?

MR. FARQUHAR: No, they made him have it commuted his whole life.

MR. LUPUSELLA: (In Italian with Mr. Spina)

I think we can take a look into the situation. This gentleman was not advised by the Board that he could have repaid the \$1,000.00 and something back with a deduction of \$10.00 a month. Instead, the Board decided to commute the pension. I think this is a problem that can be cleared.

MR. FARQUHAR: I don't want to go into too much detail on this. This is done to lots of people. They don't usually recover it \$10.00 a month for three years. That would be very unusual. So, the first point here is that we have protested for a long time that the pension should be commuted at a fair rate, but they are not. That is one point.

Second, the whole question of the way the Board deals with overpayments -- they can come after you three, four or five years later and say that due to their error, or something else,



July 17 - 63

5 was a mistake and they collect back the overpayment. That is not at all rare. We have always asked that the worker be given clear notice of when a payment is going to be cut off. If he isn't given clear notice, then they can't create an overpayment.

MR. SPINA: (In Italian)

10 MR. FARQUHAR: He is saying he never got the cost of living on the \$7.00 they took off.

15 MR. LUPUSELLA: Can we get the claim number of Mr. Spina?

MR. BIGGIN: Two more speakers. Derek Lall?

20 MR. LALL: Gentlemen of the committee, Mr. Minister of Labour, I would like to ask the Minister concerning Bill 101, why is it that you don't form some legislation in regard to these companies and these corporations that when you get injured, they must create some type of areas for injured workers if they can't get back the usual job.

25 This is just a small fraction of insured workers. And is swelling over 90,000 people all over Canada. I mean, the new Bill that is going to pass, it is just creating more problems again. Because, I mean, the old injured workers can't back the job. I make several attempts with my company. We are all outcasts right here. You can't get back your job.

30 I was making \$1,963.00 for 7½ months work. Now I am making \$156.00 a month. That comes out to how much -- \$38.00-something a week? I got a wife and four kids. All my savings are gone. The



July 17 - 64

company terminated me before the Board made a decision and pensioned me out.

Now when they say "temporary total disability" -- you get temporary total disability at the inception of the accident and your condition remains the same, and the so-called "meeting with the doctors at the Board and what they are doing -- your condition is the same way, but they break it down and say, take 10 or 15%. You still can't go back and do your usual job. The company is now finding no job for you. The rehabilitation is telling you to go to Manpower. You roam in the streets of Toronto.

Gentlemen, this thing is very, very serious. Because I mean, it is breaking up families. People are getting in deep depression. People are committing suicides and all kinds of things. What is going to happen?

The pension adjudicator of the Board they get paid in one year what four injured workers get paid. They are doing four hours work, and they get paid for eight. Mr. Lincoln Alexander makes over \$50,000.00 and there are about six or eight people who have got to earn his money per year. Injured workers are not getting no fair game here. This is something that the Minister of Labour is not doing. I am a Canadian merchant seaman, and I have a discharge from Ottawa that entitles me to work on all Canadian vessels overseas and in the lakes. Once you get injured in the Province of Ontario, you are labelled as an outcast. No company will employ you. The company that you were working for and you get injured for, they just dump



July 17 - 65

you like that. Where are you going to go and get a job?

Most injured workers are just wasting away. They have big lines at the rehabilitation hospital. They have big lines. Why don't they just open some form of upgrading in rehabilitation and put these people back on some kind of benefits. Instead they are staying home and just sitting like that.

Mr. Minister, 1980 or 1981, they had an accident in Montreal where six Canadian seamen perished because they did not have no inspection on the job site. The judge made a recommendation, Mr. Minister, that these job sites be inspected so often that the injured workers must get safety in their jobs.

I am out of a job now going on five years. I have to start going to the supermarket and take my groceries without paying, because I don't have no money. When the police come I am going to tell them the same thing. Put me in jail and feed my family. I am the bread winner. I can't get no job. My company have 9,700 people on their payroll. And they are telling me they are telling me that they can't find nothing for me to do? The Compensation Board -- Dr. Johnson told me that I am entitled to go back and report to my employer for my job. The doctor at the company put restrictions on me and shackled my whole career. All my savings are gone. They put me in substandard living conditions now. My children are afraid to live in the area. All my savings are gone. I contribute what I have to contribute to whatever benefits they have there. Now, what is entitled to me, they are not giving it to





July 17 - 66

me. What must I do Mr. Minister?

Thank you very much, Sir.

MR. BIGGIN: Benito Liotti?

MR. LIOTTI: (Statement in Italian)

MR. FARQUHAR: "I am Benito Liotti. I came to Canada in 1957. I am a Canadian citizen. I worked 21 years without losing a day. I worked on sewers, apartments, houses, building everything. I wore out two bulldozers. I am a bulldozer and first category."

Now I am worn out. My legs, my back, my neck, my nerves. Where do I go? Where do my children go? Where am I supposed to go? I worked for the honour of Canada. I was a bulldozer man and first category."

Thank you for listening to me, Mr. Minister and members of the Conservative party, and friends who must keep up the fight."

Now, he wants to add something.

MR. LIOTTI: (Statement in Italian)

MR. FARQUHAR: "The WCB paid me for two years after my accident in 1978. Why? Because I was at least recognized by that extent to the Board doctors. Then they gave me 20% pension. A terrible brute of a counsellor came to my house. He said, 'You can beat your head on the wall, but you won't get any more money from the Compensation Board. You have got to work.' Work? Let him work on a bulldozer. Let him work with cement. Let him lift



July 17 - 67

those weights I lifted. That will show him what work is. I know what work is. No one has to tell me what work is."

MR. LIOTTI: (Statement in Italian)

MR. FARQUHAR: "All of us in this room, we worked like animals in Toronto. You don't believe us? We worked like animals. In 1957 when we arrived here, if you didn't bleed when you worked, the boss wouldn't want you there the next day. The boss-- the one in the white shirt. In Canada, people who do well are those that don't think of others, they just think of themselves. We are thinking of others."

And then he said some comments I didn't quite catch, but something about if the Conservatives can't do it, here is your ticket, go home.

MR. LUPUSELLA: Mr. Chairman?

We understand, again, your frustration. I don't think we have to pay the ticket for you to go back to Italy. You are a Canadian citizen. You gave, along with all injured workers, the best of your life in this country. You have to be treated as a human being.

We know that the law is old -- 70 years old. We are looking for changes. Injured workers across the province are looking for changes. We are going to fight, along with you, to make these changes.

MR. BIGGIN: If anything can sum up what we have heard today, is that we would like to see an end to the waste of lives that



July 17 - 68

has been occurring in the Province of Ontario and across Canada.

It is very obvious that injured workers have been hit very hard by being unfortunate to have fallen into some kind of job accident. The reality is that there has been a very heavy toll on the family and great stress to the injured worker. It is very obvious from most of the presentations. It would be great if this committee, together with the Ministry of Labour, and with the help of the Workers' Compensation Board, if they so desired, would work along with the rest of us to make this a scheme which is unequalled in Canada, in North America, or in the world, which would give justice to injured workers and mean that most of the people who we see here in this room here today, would not be living under the poverty level -- would not be trying to scrape together an existence.

Justice is all that we are asking for, and I think this has come down from every presentation. It has been a very, very hard life for most of the injured workers, and we would like to see an end to this.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Mr. Laughren?

MR. LAUGHREN: Mr. Chairman, very briefly -- every time that the injured workers come before the committee, it reminds us that there is two Ontarios. There is an Ontario for the young and the swift -- mentally and physically -- and there is an Ontario for those people who are not so young and not so swift and not



July 17 - 69

healthy. That is something that we must continue to fight to change.

You people should be aware of a couple things that I think are wrong. One, under the new Act, some injured workers will be asked to subsidize other injured workers, by going from 75% of gross to 90% of net. Some workers will be subsidizing others.

Secondly, there is going to -- if this Bill goes through -- there is going to be two classes of survivors for workers who got killed on the job -- those people who got killed before the Act happened, and those whose survivors will have to get by after this Act is passed. I think those are two principles that we all must fight to change. And I hope that you will continue to keep up the battle.

MR. CHAIRMAN: I would like to thank all those who made presentations, all of those who came out today to hear the presentations made. It certainly helps the committee in our deliberations. We have two weeks remaining of hearings of various individuals and groups. Later on, in the fall, we will further discuss Bill 101 and any amendments that might be made to it at that point in time.

At this point in time I would like to thank everybody again for coming and --- Mr. Lupusella?

MR. LUPUSELLA: Mr. Chairman, if I may thank the people in Italian?

MR. CHAIRMAN: If you would, please.

MR. LUPUSELLA: (Statement in Italian)





Hale, MacEwen & Associates,  
Chartered Shorthand Reporters  
TORONTO, ONTARIO

July 17 - 70

MR. CHAIRMAN: This meeting is now adjourned.

--- MEETING ADJOURNED AT 1:00 P.M.

\_\_\_\_\_  
Brian Weagant

CA 24N  
XC13  
-878

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, JULY 17, 1984

Afternoon sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister  
of Labour (Brantford PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Witnesses:

From the Association of Injured Workers' Groups:

Biggin, P.  
Cook, B.  
Dee, G.  
Farquhar, A.  
McCombie, N.  
Melbye, C.

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, July 17, 1984

The committee resumed at 2:17 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: Before we begin this afternoon, I would like to introduce and call on Mr. Gillies, the parliamentary assistant to the Minister of Labour.

Mr. Gillies: Thank you, Mr. Chairman. I just want to say to the people who are making a presentation this afternoon that the minister is very sorry he cannot be here. As a matter of fact, he is making a presentation this afternoon before the New Democratic Party task force on occupational health and safety. He has asked me to represent him here, and I will be making copious notes on any points that are raised or any discussions that you have this afternoon and bringing them to the attention of the minister.

Mr. Chairman: With those few remarks, I would call on the delegation, whoever is going to kick off.

ASSOCIATION OF INJURED WORKERS' GROUPS

Mr. Biggin: On behalf of the Association of Injured Workers' Groups, I would like to open this session. My name is Phil Biggin. Alec Farquhar, Brian Cook, Nick McCombie and Garth Dee will also be making presentations.

Given the length of our brief, it looks very much as if we might have difficulty in getting through the presentation today and we would like the committee to consider giving us another time slot at some point.

Mr. Chairman: Let us get on as far as we can. It just depends on things. If the opportunity arises that we have time slots later on down the road, I am sure we will be glad to accommodate you.

Mr. Biggin: That is okay.

Mr. Chairman: We certainly want to give everybody who wants to appear before us an opportunity to speak.

Mr. Biggin: We would not need it if we get through it today, but I doubt we will.

I am going to turn it over to Alec Farquhar, who will give an introduction to the brief.



Mr. Farquhar: Mr. Chairman, the plan is that I will give a very brief introduction touching only the high points. Nick McCombie will be giving a synopsis of our whole brief and the ideas that we came up with on the various parts of Bill 101, then we will move into a detailed discussion. As Bill says, we hope to have extra time beyond today because we really think we have a lot to offer the committee with respect to the detailed study we have done of the bill and some of the ideas we have come up with.

As you can tell from this morning's speeches by the very large number of injured workers who came, there is a very grave concern among injured workers that Bill 101 does not give them the justice for which they have been waiting a long time.

I might explain to you that we did very little work to get that large number of workers here this morning. We had around two weeks' notice of this meeting. Basically, we sent a mailing to several hundred workers. Obviously, by word of mouth, word did get out. Compared to June 1983, it was a much smaller crowd of people. Those of you who were on the committee in 1983 might remember the board advertised the date of the hearing with the workers' cheques, so do not think the few hundred people who were there this morning are the only ones, even in Metro Toronto, who are concerned about this problem.

There are thousands and thousands of people, and I am sure members of the standing committee are all aware of the general statistics. We are dealing with more than 80,000 recipients of pensions from the board, and you will see in our brief we are dealing with more than 5,000 adult direct dependants, mostly widows, of workers killed on the job, and more than 2,000 children of workers killed on the job. We are dealing with probably close to or a little higher than 90,000 very severely disadvantaged citizens of Ontario.

We are talking of a lot of people, a lot of families, and certainly a lot of concern.

Our reaction to the bill as it was presented by the minister is mixed. On the one hand, when we make a comparison between the old legislation and Bill 101, we certainly have to admit that there are a number of positive changes in that bill and probably fewer negative changes. On balance, it does represent somewhat of an improvement over the old legislation, and we are certainly crediting the minister for that. In very many areas we are crediting the Ministry of Labour and the government for paying a lot of attention to what we had to say. We are not just thinking of some of the big changes here, but even some of the minor ones. It is very clear that our briefs and submissions, our impassioned pleas, were listened to.

But when we look at the bigger picture here, we have to see that Bill 101 does not represent anything close to the justice that injured workers need and deserve, so that in our appearance here before the committee we will obviously be making a lot of recommendations for major and minor changes to Bill 101. We have not abandoned our long-term goals and we are certainly hoping that the government at some point, as soon as possible in fact, will deal with those long-term demands of injured workers

What is lacking in Bill 101? We noted in our brief, and I am really going from the introduction here, that a lot of the most important questions that Professor Weiler, the white paper and those of you who were members of the committee at that time addressed, are not here in Bill 101 one way or the other. We have a lot of blank spaces, a lot of subjects that have been delayed to phase 2. One point we hope you will be open to is to add at least some of this subject matter to Bill 101 and not let it stay for phase 2. Here we are thinking specifically of inflation indexing, something about vocational rehabilitation and job guarantees, and some other points I will mention in a minute. So one thing we hope the committee will do is look at what is absent from Bill 101 and be willing to put in some of the subject matter that is absent and deal with it now.

Second in terms of Bill 101, even if we take it as it is there are a lot of changes needed to give at least some kind of minimum guarantees to those workers who are most disadvantaged by the present legislation. Nick is going to give a synopsis but I will give you the main points we are concerned about.

As I mentioned, first of all is the matter of inflation indexing. Second, if you are going to stay with pension supplements for the next few years, we want to see improvements in those supplements that will benefit all the workers who are disadvantaged from the present system and not just the relatively small number who are over age 60. We want to see changes that give some kind of good supplementary assistance, above and beyond the pension, to all workers who suffer from the key problem of the long-term disabled worker, which is that very often the so-called meat chart pension from the board does not give anything like the compensation for actual wage loss that is needed. I use the term "actual wage loss" in a general way and certainly not to endorse Professor Weiler's proposal.

Third, we would like to see something in this bill about vocational rehabilitation--we will be talking about that later--and return-to-work provisions. We would like to see a deletion of all provisions for deducting Canada pension plan benefits from Workers' Compensation Board benefits. We still object to that principle.

Then we get to survivors' benefits. There are some improvements there, and where there are improvements we think it is an absolute priority that those improvements be extended to existing survivors. I mentioned the figure of more than 5,000 widows and widowers of workers killed on the job. I am sure all of you can think back a few weeks to the Falconbridge incident and the workers killed there. Those workers' families will be trapped under the old law, the flat rate \$600 a month to the spouse, if you leave this bill as it is. We cannot let that one go by.

The sixth point of importance to us is that we do not like the concept of 90 per cent of net. We would like to see benefits based on 100 per cent. In the area of appeals, we would like to remove the chairman of appeals from membership on the corporate board. That is pretty important to us.

There are many more points that will be brought out in our detailed presentation later. I think it is fair to say that one of the most important for all of you here is our response to the very important questions of financing Workers' Compensation Board benefits. Garth Dee will be speaking on that.

Just in a general closing remark, I would like to say that all member groups of the association--and we are nine groups representing thousands of injured workers; obviously we here at the table are not injured workers, we are community legal workers, lawyers and law students who represent injured workers and who have developed some expertise in this--all of us have greatly appreciated the process through which we have gone with the standing committee. We feel that in the last couple of years we have at least had the chance to appear before the people who are going to be making a lot of the decisions and recommendations. We feel you have given us a full and complete hearing. I am sure we would like some extra time after today to go on with our presentation.

Compared to the treatment we got at the hands of Professor Weiler, who really shut the injured workers out of any public participation in the process, you have given us a very good hearing and we anticipate working together on improving Bill 101. Certainly at the later stage, when you are considering it clause by clause in September, we are quite open to any questions you might have to ask, any clarification or draft legislation you might like to see, any kind of help we can give you, we certainly will.

We would like to see a lot more in the bill. We would like to be able to tell injured workers in the fall this is a bill that will give them the justice they have been waiting for all these years.

I am now turning it over to Nick McCombie to give a synopsis.

Mr. Lupusella: Mr. Chairman, I think it is appropriate at this time to raise a few questions with each speaker rather than wait until the whole presentation is made. I think we will save time and there will be more co-ordination about issues that are raised with each speaker.

Mr. Sweeney: Mr. Chairman, may I speak to that? My understanding is that the opening statement is simply highlighting the issues and we are going to get an expansion of each issue. To start questioning now would be a waste of time. Let us hear the expansion first, which I think will answer a lot of the questions.

Mr. Chairman: Then as we get to each individual speaker, perhaps it might be appropriate to ask questions.

Mr. McCombie: Maybe I could just shed some light on this question. What we have planned to do is, I will very briefly now go through the main points of our brief and then we are going to go back and go through a section-by-section explanation. I will just give a five-minute or 10-minute synopsis of the main points in our brief and then we will go back and Brian will start with pensions and supplements, which is the first part of our brief.



Alec has given you something of an outline of our general response to Bill 101. What we would like to do now, as I say, is go through our brief. It is fairly extensive. I should say we had a fairly short time to put this together so I would first of all ask your indulgence with regard to the typographical errors. There are quite a few. But given the fact we had such little time, I think we got a fairly substantive brief together in response to the bill.

The first area we deal with is benefit changes. We talk about pensions and supplements and address the questions raised in Bill 101, the amendments proposed in Bill 101. As the people who were on the committee before can remember, we had a very extensive plan for how we would like to see pensions and supplements paid in our proposed dual award system. We recognize that is not in the bill and we have addressed both our primary objective, which Alec said we will continue to be pushing, but we have also made some suggestions in our brief as to how some of the language can be tightened up on pensions and supplements.

2:30 p.m.

In particular, we are looking at things like the rating schedule, and we think that should be changed. Certainly, there should be some provisions in the legislation about the rating schedule.

We also deal with the question of the so-called old age supplement, and we have included some draft wording that originally came from a meeting we had with the deputy minister in which we put forward our suggestions for draft wording that would expand the concept of the old age supplement to other workers in similar situations who do not happen to have hit the magic age of 60 or whatever it is determined to be. As I say, we have included our alternatives.

The second part is on rehabilitation. I had a chance this morning to glance through the minister's opening remarks yesterday. I notice he said that rehabilitation will be dealt with in phase 2. Certainly, many of the presentations given this morning made it crystal clear that rehab has failed in Ontario at the Workers' Compensation Board. It is very important to deal with it now and to get at least something on the books to give the board the direction. Assuming a new corporate board, new faces, a fresh start, let us give them something fresh on rehabilitation. We deal with that in our proposals, including some draft language and referring back to the majority report from the standing committee where our proposals for "suitable" and "available" were taken up.

The third part, as Alec has mentioned, is indexing. We will not belabour this point. We are fairly strongly on record on indexing. Again, we do not see any reason to wait for phase 2 for an index act.

On the fourth point, Alec touched on survivors' benefits. I would certainly urge the committee members when they have some time to sit down and look at the tables appended to the survivors'



benefits section. They are extremely revealing. Many of us who may be accused of being cynical about bills and the Workers' Compensation Board in general looked at the original bill and the survivors' benefits and thought there were some substantial improvements. There are some, but there are a lot of survivors who will fare less well under the new than under the current system.

A lot of credit goes to the people who did a lot of work on comparing apples and oranges. That is what we have to do with very little resources, compare apples and oranges, a flat rate versus lump sums and age-related percentage of pension. We have gone through that in the tables. Hopefully, if not today, then in the next little while, the committee members will go through that.

Section 5 deals with temporary benefit issues. There are a number of issues raised there, all of which are fairly self-explanatory. We have always had a lot of problems with the 90 per cent of net provision--the ceiling, temporary partial disability and a couple of suggestions for inclusion within the bill, such as recurrence benefits.

We then go on to financing. The reason we raise this now, while it is not directly part of Bill 101, is that the Workers' Compensation Board has recently released its annual report. To the best of my knowledge, it has an unprecedented two-page description of the problems of the unfunded liability of the Workers' Compensation Board. This is the first time the board has publicly made such a plea for understanding on the part of employers about the pickle they are in.

We have spent some time going through financing and the problems we see that might rebound on injured workers if this problem of the unfunded liability is not met. The other point that is extremely important for the committee to consider is the fact that injured workers have been complaining--we do not need to tell you that--about treatment by the compensation board and claiming the board has given them short shrift and that they have been ineffective in their roles as adjudicators and providers of compensation. This part on financing indicates they have been incompetent in managing an insurance scheme. There is a lot they could have done earlier to prevent this huge unfunded liability.

Finally, in sections 8 and on, we deal with some of the administration issues. Very briefly, to summarize what we are saying in here, you can write whatever you want in the bill and it can be passed in the Legislature. It is really not going to matter an awful lot unless you get new people in to run the Workers' Compensation Board, to sit on the appeals tribunal, to sit on the disease panel, all these positions.

If you have people with the same kinds of defensive and cutback mentalities in those positions as you currently have, you can write the best bill in the world and it is not really going to have a big impact on injured workers. So we deal with some of these issues in administration. We also make some very specific recommendations on certain sections. We hope some of these will not be too contentious, while others may be.

Very briefly, that is an outline of the brief we intend to present today. If we have time, we would obviously like to get through all of those matters. If not, I just echo what has been said earlier that we would certainly like to come back and answer any questions you may have.

Right now we will start with benefits. Brian Cook will deal with the first sections under benefit changes.

Mr. Cook: Mr. Chairman, does every committee member have a copy of our brief? It might also be helpful if you get out Bill 101 because it will be referring to various sections in Bill 101 itself.

The question of compensating the permanently partially disabled worker is the nub of workers' compensation. It is the very centre of it. When this whole process of looking at compensation started--years ago now it seems and in fact it was in 1979 when Professor Weiler was appointed--he noted and everyone else agreed that it is how you compensate the permanently partially disabled injured worker who is the main problem that has to be solved by the Legislature. Clearly, the system we have right now is not working very well.

As you know, Professor Weiler was hired to come up with an alternative. As far as we are concerned, the so-called actual wage-loss system which Professor Weiler devised would be an unmitigated disaster for the injured workers of Ontario. We will not today go into why we feel that is so. We covered that very well last year, and we do not want to go into that again except to say we are extremely concerned by the minister's statement that he may still bring this system in during phase 2. We have told the minister that our association will keep pressuring him until the day he tells the injured workers that the government will not abolish their pensions and will not institute Professor Weiler's system.

What Bill 101 basically does is say we are going to keep the current system that we have for compensating the permanently partially disabled worker.

On the first page of our brief we quote the new subsection 45(1), which is precisely the same language except that it is based on 90 per cent of net earnings instead of 75 per cent of gross earnings.

The way this section has come to be interpreted is that the pension that is being granted by the compensation board is compensation only for the disability itself. The language says, "the impairment of earning capacity for the worker shall be estimated from the nature and degree of the injury." What that means is the pension is not compensating the effects of that injury on the individual injured worker. It is a very rough justice system. Everyone with the same disability gets the same pension regardless of the impact of that disability on the person. That causes all of the problems.

2:40 p.m.

What the current system does, and it is maintained by Bill 101, is that you have pension supplements, which are theoretically the place where you address the actual impact of the injury on the individual.

We believe this chance should be taken now by the committee to clear up some of the misunderstandings that arise about compensation pensions. The key thing we are asking you to look at is the actual wording in subsection 45(1), and in particular the words describing what is being compensated: "the impairment of earning capacity." Those words now mean almost nothing. It is not the impairment of earnings. It is the impairment of earning capacity. It is a vague concept that does not mean anything.

A lot of the anger of injured workers comes because of confusion about what this pension is supposed to be. They asked you today, "How on earth can we live on these tiny little pensions?" Of course, they cannot live on those tiny little pensions. The legislation should be clear that what the pension is for is simply a clinical rating of their disability and is not meant to compensate for their wage loss.

Accordingly, we would propose that the words "impairment of earning capacity" be replaced by the words "clinical impairment," which would clarify exactly what the pension is doing. On page 2 of our brief we define clinical impairment as meaning "a medical estimation of any physical and/or psychological damage resulting from an injury or disease arising out of and in the course of employment after maximal medical rehabilitation has been achieved."

This change would not solve the problem of injured workers, nor would it provide injured workers with any larger pensions or anything else. What it would do would be to get the legislation straight about what exactly is being compensated, and there would be no pretence that earning loss is being compensated or this mysterious earning capacity. It would be clear that it is a clinical rating.

The other feature of the current system which is maintained in Bill 101 is the permanent disability rating schedule, or the "meat chart" as some people referred to it this morning.

For those of you who have never seen it, the meat chart is a creation of board policy. The reason it is called a meat chart is that it shows pictures, for example, of the hand. The thumb is worth so much, the fingers are worth so much, and so on. Those words, "the meat chart," are obviously very emotive words. The reason for that, we feel, is in large part what I have just said, that the pension is supposed to compensate for more than it actually does.

Any compensation system, as far as we know, must have a permanent disability rating schedule. One of Professor Weiler's greatest disservices was claiming he had managed to abolish the meat chart, that compensation was not going to involve the meat chart any more. It simply was not true. His compensation system involved the permanent disability rating schedule to determine the size of the lump sum awards, just as the current system has a rating schedule to derive the percentage of pension.



We are not opposed to a rating schedule. It has a lot of advantages, because it is a way of simply determining the clinical rating, a basic compensation payment for the disability itself. What we are opposed to is the notion that a pension derived from a rating schedule can do anything other than that.

The Minister of Labour asked us for our views on the debate in the Legislature at the time of the introduction of Bill 101. He noticed, as we did, that there was a lot of confusion on the part of many people about the fact that the rating schedule was still in the compensation system and there was opposition to that. It is also a topic that has come up in the press a lot, again because of the emotive value of the idea of a meat chart.

We are not opposed to a rating schedule. We want it clarified what it is for. We do, however, have objections to the rating schedule that currently exists at the compensation board, because it is totally meaningless. It is not connected to anything; they are totally arbitrary percentages that have no relationship whatsoever to anything.

Most of the people who were there this morning suffered from low back injuries and most of the people who came on June 1, 1984, and June 1, 1983, had low back disabilities. It is the low back disability case that is the most serious situation you people have to deal with because they are the people who have the hardest time ever finding a job.

Part of the reason for that is it is basically an invisible injury. If you have lost your arm, anyone can see that is what is wrong with you. If you have a bad back, that is not immediately obvious. It is clearly far harder to find a job with a serious low back disability than with virtually any other type of disability.

Accordingly, one thing that we would very much like to see, and certainly the people who came out this morning would very much like to see, would be a change in the rating schedule for low back disabilities. British Columbia pays up to a 60 per cent pension for low back disability under a similar sort of scheme.

In Ontario the maximum under the current rating schedule is 30 per cent for a low back disability. We believe that rating schedule must be changed. The maximum for a low back disability should be 60 per cent at least, if not higher.

Because the rating schedule is determined only by board policy, it could at any time in the past 70 years have adjusted the rating schedule for low back disabilities. They have not. Therefore, it seems clear to us they need direction from the Legislature to make that important step.

Therefore, we are asking that subsection 45(3) of Bill 101, which gives the legislative authority for the rating schedule, be amended and that it specifically state in the legislation itself that the rating for low back disability shall be up to at least 60 per cent.



Furthermore, it follows, of course, from what happened this morning and from what has happened in previous proceedings before this committee, that every injured worker who is receiving a low back disability pension now under the current rating schedule must have the right to come and be reassessed for a low back pension under this new scheme.

If the two steps were taken of clarifying the intent of the pension and improving the rating schedule, a lot would be improved for injured workers and a lot would be improved for you as politicians having to deal with constituents who are injured workers, because so many of them have low back disabilities. If people got a greater pension for permanent disability that they could rely on getting every month for the rest of their lives, it would go a long way to solving the problems of compensation.

However, it would not do everything because, no matter what, with the rating schedule you are relating to the disability and not the individual. To deal with the effects of the accident on the individual you have to look at pension supplements.

There are some changes to the current pension supplement scheme outlined in Bill 101. Frankly, we do not feel they go nearly far enough and we trust this committee will look at what has to be the most important area, pensions and supplements. Now is the time. The minister has said that phase 2 may come in some time, but who knows when that will be. The chance is before you now to do something concrete for the people who were there this morning and the people they represented, thousands of people across Ontario.

If you look at section 45 of Bill 101, which deals with permanent disability schedules and supplements, you will see that subsection 5 will be the new pension supplement section. It has essentially the same wording as the pension supplement language in the current act.

2:50 p.m.

It says, "Notwithstanding subsection (1), where the impairment of earning capacity of the worker is significantly greater than is usual for the nature and degree of the injury, the board may supplement the amount awarded for permanent partial disability," subject to the worker's co-operating and looking for work and co-operating with the board's rehabilitation department.

Again, we find that this phrase, "the impairment of the earning capacity," is there. As I said, those words do not mean much any more. Now we have, "the impairment of the earning capacity...is significantly greater than is usual for the nature and degree of the injury."

As someone who has represented quite a few injured workers, I certainly know we all agree, and anyone here who has represented injured workers before the board will know, that those words, "impairment of earning capacity...significantly greater than is usual," have been the subject of more appeals at the compensation board than practically anything else.

The problem is is that they do not mean anything; they mean absolutely nothing. Whatever meaning they may have originally had to whoever drafted them, at the hands of the compensation board, in its interpretation of what those words mean, they literally have no meaning whatsoever. The board will in countless cases send out a letter to the injured worker saying, "We are denying your supplement because the impairment of earning capacity is not significantly greater than usual," without telling the worker what the hell that means.

We can sometimes figure out that it means the worker is only getting a 10 per cent pension and that therefore the board does not want to give the worker a supplement, or that the worker is too young or too old or has been on supplement for too long or whatever. There are all these different excuses that it never tells the worker.

This language has to be changed. This language is now before you as a committee and it can be clarified. Surely we want a compensation act that injured workers can understand. We want the compensation board, if it is going to deny benefits to people, to deny them for reasons that are understandable instead of totally arbitrary and mysterious.

Mr. Lupusella: Even the board does not know the meaning of this. I raised this question when the chairman was before us, and the people who answered my question were unable to give a satisfactory answer.

Mr. Cook: That is right. On the top of page 4 of our brief, we offer a substitute wording on how to improve subsection 45(5). It would read: "Notwithstanding subsection (1), where the impairment of earnings of the worker is greater than the amount of the award under subsection (1), the board shall supplement the amount awarded for permanent partial disability for such period as the board may fix unless the worker, (a) fails to co-operate," and so on.

This means it would just be a very simple test for the board; even it could handle this. You look at the amount of the pension the person is getting from the board. If it is not enough to cover the loss of wages the worker has, the board shall pay a supplement.

The board would still have the power to cut people off supplements if it felt they were not looking hard enough for work or whatever, but it would certainly go a long way towards clarifying what a supplement is for and the exact legal reasons for which it can be denied to a worker.

Under subsection 45(6), we have mentioned already, and we will probably mention again and again this afternoon, our opposition to the idea of integrating Canada pension disability benefits into compensation. As far as we are concerned and as far as injured workers are concerned, this is a plan they contributed to throughout their working lives. It is a separate entity from workers' compensation, and Canada pension plan benefits should not be stolen by the compensation board. They are the worker's, not

the board's. If a person is entitled to compensation benefits, he should get them; if he is entitled to CPP, he should get it.

We are also opposed, of course, to the 90 per cent of net. The pension supplement system we now have, which is contained again in Bill 101, has two main functions. One is a full supplement to the worker who is looking for work, and the other is a wage-loss supplement to make up the loss of wages the worker has after the accident.

When it comes to paying the wage loss, the difference in earnings before the accident and after the accident, we cannot see how there is any justifiable reason whatsoever for paying only 90 per cent of that difference. There is no reason for basing compensation on 90 per cent of net pay to begin with, but when it comes to paying the wage loss, what possible rationale can there be for only giving the person 90 per cent of the loss of wages? Why not give them 100 per cent? It just does not make sense.

Under subsection 45(7) is a new provision in the legislative language, which provides for a special supplement for "older workers," which of course is undefined, and which allows for the payment of equivalent to the old age security payments from the federal government, which I believe is about \$270 a month right now. This provision was in the compensation scheme. This came up this morning at some length, and Mr. Cain was endeavouring to explain how the compensation board had arrived at this.

Our understanding was that from 1975 until June 1983, the board paid special old age supplements to older workers who clearly were not going to get anywhere from rehabilitation, and they were just paid. By policy change, the board eliminated those supplements and any supplement to anyone receiving Canada pension plan, regardless of age. What subsection 45(7) does is basically put back into the system something that was there for seven years and was only changed by the whim of board policy.

The point of the supplements ought to be to recognize the fact that there are some injured workers who because of a combination of disability and age, language skills and other socioeconomic factors will never be able to get back to suitable work. As was pointed out many times this morning, before the injury those workers were able to work, so the decisive factor is obviously the disability. They had the same language and education skills before the accident as after the accident. It is primarily because of the accident that they cannot work. If they had not had the accident, they would still be working.

We believe there ought to be some sort of additional supplementary benefits available to any injured worker of any age who can demonstrate he will not be able to find suitable work, because right now Bill 101 does nothing for any of those people who were there this morning. The only people who get anything out of Bill 101 in terms of supplements are those who are older, and there are a lot of problems, even with the current wording of this subsection 45(7).

Even if you do not agree with us that there should be some



supplement for all workers, you have to do something to change this wording here in subsection 45(7), because we fear it will be almost impossible for workers to get these special old age supplements at the hands of the compensation board.

The first difficulty is again with the words "where the impairment of earning capacity is significantly greater than is usual." Those words should be replaced with the wording that I outlined before.

Second, it says, "where in the opinion of the board, the worker cannot return to work." Those words "the worker cannot return to work" are far too restrictive. In most cases what you will have is a person who theoretically might be physically capable of doing some kind of job, a school crossing guard job, a security job or whatever. The problem is that they will not ever find that job because no employer will ever hire them.

The whole process of going around looking for nonexistent work is so difficult for people. Why should they have to take some really horrible, low-paying, very low-status job after having worked their entire lives in dignity and making good wages at a good-status job? It is not acceptable that an injured worker should have to go and do these dead-end, job-ghetto jobs.

3 p.m.

The point is that a lot of people, although they might be theoretically capable of working, will never be able to find work. What we suggest is that wording be changed to say "there is no suitable work available." In other words, the worker would be entitled to a supplement if it were shown that there was no suitable work available. That would place the onus on the compensation board to find these jobs and prove they are suitable. It follows that there need to be definitions of "suitable" and "available." Those words crop up all through the act and the legislation.

I remind the committee of its report of December 1983. To quote the majority report, "It was therefore agreed that 'suitable' work should be work which the individual is physically capable of performing, for which the individual is qualified and which does not place unrealistic demands on the worker." That, in our view, would not be an ideal definition, but it would be an awful lot better than nothing, which is the situation now.

If we are going to have these words "suitable" and "available" as criteria for deciding whether people get benefits, they have to be defined in the act. So we would at least remind you of the definition you people came up with as a committee and ask that you consider putting it into Bill 101.

We had some difficulty in preparing this brief because in representing injured workers, the people this morning and the clients who come to our offices and so on, we know what they deserve as individuals, what would be just for compensation. We have outlined that to the committee in previous years. That is our dual pension award, two permanent pensions: one permanent pension



for the disability itself and the other permanent pension for the loss of wages for that worker. That is what we still think should happen. It is obviously not going to happen. The government has made it clear by introducing Bill 101 that it is going to preserve the pension and supplement situation.

I have gone through some of our problems with the way section 45 is worded. At page 6 of our brief, we offer a different way you could look at this whole system; still having a system that features pensions and supplements, but that would be better than just tinkering with the wording of section 45 in Bill 101.

The first thing would be the definition of "clinical impairment," which we have already gone through. Subsection 45(1) is a pension based on the clinical rating, and what is being compensated is clinical impairment.

Subsection 45(2) is the same as in the current act.

Subsection 45(3) deals with the rating schedule. As you will see here, we propose to add, "The rating schedule shall be distributed by the board on request to physicians, injured workers and other interested parties. With respect to low-back injuries, the maximum percentage shall not be less than 60 per cent."

Subsection 45(4) is the same as the current act.

Subsection 45(5) is a pension supplement for someone who has suffered a wage loss. It simply says, "Pay 100 per cent of the wage loss for a worker who returns to work."

Subsection 45(6) says they get a pension and a supplement equivalent to 100 per cent while looking for work. We add here, from the language in section 45, that it not be just the board's opinion about whether the person has failed to accept a vocational rehabilitation program or a job which in the opinion of the board is suitable, but the injured worker's physician also should be consulted and the opinion of the injured worker's physician about what his or her patient is capable of should be taken into account.

Where it happened, though, that a person just said, "No, I do not want to look for work any more; I agree maybe there is some job out there, but I am just sick and in too much pain, and I cannot look any more," what we would want to have happen would be that rather than taking an arbitrary amount, such as old age security, the board should look at the actual circumstances of that worker and figure out a supplement that worker should get in addition to the pension.

In subsection 45(8), we outline a number of the points we would want the board to look at in determining that special supplement: the extent of the disability, the age, the level of skills and education, the language spoken, any emotional problem suffered by the worker, the state of the employment market both generally and in the local community and any other factor that is relevant to determining the worker's ability to earn income.

Under our subsection 9, we would say that if you are getting

the full supplement while you are looking for work, that will continue until one of two things happens, either you get back to work or, of course, if you get cut off by the board for failing to co-operate or so on, then you get this special supplement.

What happens very often to people now is they get labelled unemployable by the compensation board. They get sent to a place like COSTI, which says they are unemployable. When the board hears that, it cuts off the supplement and the rehab and the person is stuck. That is a disgraceful thing, because people are unemployable primarily because of their injury. What the board should do in those circumstances is say, "This is a case where we are going to have to do a really good job at rehabilitation." Instead, they do the opposite and they close the books on the person.

What would happen under the language we are proposing is that if the board tried to say someone was unemployable, they would have to pay him a full supplement. We need an onus on the compensation board not to throw people on the garbage heap but to take rehabilitation seriously. Under this language, if the board said someone was unemployable they would have to pay a full supplement.

Throughout Bill 101 there is language such as "the board shall have regard to the effects of inflation." We are a little worried about what those words mean. They say, "We looked at inflation but we decided to ignore it." What does "having regard" mean? We would rather that at least it should say "have full regard to the effects of inflation."

We appreciate subsection 9, which tells the compensation board once and for all that getting Canada pension plan benefits should not be a bar to receiving any other benefits.

The rest of the thing is essentially the same as either in section 45 or the current act.

Mr. McCombie: It is in the current act.

Mr. Cook: It is in the current act. What is in the current act is that if someone is permanently disfigured about the face or head he will get a lump sum in addition. The board otherwise would say, "Your impairment of earning capacity has not been affected by this scarred face." What it should say is "permanently disfigured" and take out "about the face or head," because a lot of people have horrible scar tissue all over their bodies from severe burns, for example. Under the current system, they rarely get any pension at all for that because the board says their earning capacity has not been impaired. They should get some compensation for any permanent disfigurement.

That, in summary, is what we are recommending as interim improvements to the pension and supplement situation: to clarify what the pension is for; to revise the rating schedule, particularly immediately to increase the maximum for low-back injuries from 30 per cent to 60 per cent and in the meantime to direct the board to start a scientific study of all the other

percentages in the rating schedule; to improve the supplement situation; to clean up the words so the board does not have this arbitrary handle under which it can deny people without any clear, rational reasoning.

In our view, as we have outlined in our proposal for a wholly new section 45, do not just have a special old age supplement. Have a special supplement for all workers. Someone who is 40 years old can have just as hard a time getting back to work as someone who is 60 years old. It is a little arbitrary to say we are going to give a little crumb to people who are over 60 but nothing to people who are under 60.

3:10 p.m.

Mr. McCombie: I just want to add one thing. It was brought up this morning by Phil and concerns subsection 45(9) of the bill; it deals with our suggestion that CPP benefits should not be a bar to receiving benefits from WCB.

I think Phil very clearly summed up the situation where we had met with Workers' Compensation Board, we had asked for a legal opinion, they said they would get one and then they reneged. When they appeared before you in the spring, it was raised again and they said again would look into it. They just keep stalling.

As Phil says, this bill is unlikely to become law before January 1, 1985, at the earliest. I would like to echo what he said, and I do not know whether this is out of order, but I would think the committee might look at the idea of directing the board to follow up what is clearly the intention of the Legislature and the intention of the Minister of Labour (Mr. Ramsay). I hope there is no dispute among the committee members in this area. This is a policy matter that could have been rectified months ago, but the board has just dug its heels in and said no.

Again, I do not know whether that is out of order, but I think it would be important, as Phil said this morning, as kind of an indication to injured workers that the board is listening. As Alex said, we appreciate that the committee has listened to us, but we are not getting anything from the board. If they are not going to listen to us, then perhaps they will listen to you.

Mr. Lane: I can agree with your thinking on much of what you have said, but there are a couple of things I wish you would clarify for me.

You were saying that you were not satisfied with 90 per cent of net and that it should be 100 per cent of net. In some cases 100 per cent of net would be more than what regular earnings could be if a person was not injured; because you do not have to go to work, you do not have to support your car and you do not have to buy your lunch or do certain things when you are not going to work that you do when you are going to work. So 100 per cent of net in some cases would be considerably more than the earnings would be if there were no injury.

Mr. Cook: There are two aspects to this 90 per cent of



net. One is the proposal to base all compensation benefits on 90 per cent of net. The thing to understand is that in fact they are not going to be based on net pay at all; they are still going to be based on your gross pay. The board, under this system, will take what will be reported to the board as your gross pay and will then estimate the probable income tax, the probable unemployment insurance and the probable CPP deductions for that worker, and that will give them net; which will not necessarily be the net pay of the worker at all, except by coincidence. They will then take 90 per cent of that.

Your point, Mr. Lane, is true. Some people do not have certain expenses related to those they have when they are working. However, it is also true that people have additional expenses as a result of being disabled. For example, you may have to hire someone to cut your lawn, shovel your snow or do little repairs around your home that you would ordinarily have been able to do on your own. So you save some money from lunches or whatever, but you incur other expenses; it is hard to balance those two.

We feel that workers' compensation is supposed to be an income replacement scheme, and therefore you should be covered in full; whatever you were getting before the accident should be covered after the accident.

My second point, though, deals with subsection 45(6), which talks about a supplement for someone who goes back to work but is making less money than before the accident. That subsection says we are only going to pay 90 per cent of that difference; we are not going to pay 100 per cent of that difference. This is someone who is back at work with a loss of wages, and we just cannot see any rationale whatsoever for penalizing that person. It just does not make sense.

Mr. Lane: I can agree with that. The guy who goes back to work should get 100 per cent of net, but I have some difficulty in that other area. In Elliot Lake they drive 30 and 40 miles to work in many cases, and with the price of gasoline that is a fair expenditure. If they are like me, the deduction from income taken off at source is not sufficient so that at the end of the year you have to pay another chunk to the people in Ottawa. Basically, in many cases the chap who was getting 100 per cent of net would be getting more than he got when he was working.

Mr. Dee: One thing I would like to point out is that during the phase when somebody is actively looking for work, he probably puts more miles on his car, walks farther and takes more bus trips than when he is at work. He would probably reduce his costs by finding a job that he goes to in the morning and comes home from at night. During the period of actively looking for work there is a raft of incidental expenses that are not there when one has a job. So while the type of expense may change, it is perhaps even larger when looking for work than when one has a job. We heard somebody today talking about the expense of looking for work.

Mr. Lane: I guess we could argue that one back and forth.

Mr. Havrot: There is also no tax on the compensation the



employee, the claimant, gets. It is not subject to tax under the Income Tax Act.

Mr. Cook: Neither is the net pay.

Mr. Sweeney: The difference between the net and the gross is the tax.

Mr. Havrot: No, but--

Mr. Sweeney: You go to net but you are including tax.

Mr. Havrot: Right, but when he gets his benefits, he is not being taxed on that at the end of the year. It is not included in his income.

Mr. McCombie: Net pay is not taxed either; gross pay is taxed.

Mr. Havrot: I understand what you are saying, but if the individual gets back to work and during the course of that year his income is, say, \$20,000, if he is off for half the year, he is taxed on the \$10,000, but he is not taxed on the rest. He was getting 75 per cent before on gross, and now he is getting 90 per cent on net, but he is not being taxed on that income at any stage.

Mr. Cook: In the previous hearings of the committee, the problem came up about the tax considerations when one returns to work. In our view, the Liberal dissenting report came up with the beautiful solution to that problem, which was that one pays 90 per cent for the first three months, then one switches back to 100 per cent. By then, one has dealt with any tax problems that might come up.

Mr. Lane: I have one more brief question. You mentioned, and I can appreciate this, that a person who has been injured and has been looking for work for a long time eventually raises his hands and says: "Hell, I do not feel well. I am tired. I am not going to look for work any more." At that point, I think you suggest the board should provide enough supplement to the pension to make up for 100 per cent of net. If we do that without any guidelines, I am sure a lot of people out there will say they are tired of looking for work.

Mr. Cook: That is not actually what we are proposing.

Mr. Lane: That is what I got out of what you were saying.

Mr. Cook: I am glad you raised it then. We feel there has to be some incentive in this compensation scheme to put some pressure on people to try to get back to work. In particular, there has to be pressure in the system for good rehabilitation, which we will get to in a minute. People should not have to do it all on their own. There should be a lot of support and counselling from the compensation board.

What we propose is on page 7 of the brief, under subsection 8. There is a list of things we want the board to look at in

determining a percentage of pension for the person you described, Mr. Lane, who has given up, for very good reasons in many cases. We want them to look at all these things.

The board might decide to pay a full supplement to the person if he is elderly, has a severe disability and does not speak any English. If he had everything going against him, he will get a fairly high supplement. If it is someone younger who can speak English and does not have so many things against him, he might end up with a smaller supplement, say, 15 or 20 per cent, a little extra something in addition to his pension; that is all. In this language, it would not mean everyone would get a full supplement.

3:20 p.m.

Mr. Lane: That is a good rationale, except it would work the same as the guaranteed annual income system. People come to me and say: "My neighbour gets \$43.50 and I get only \$26.25. Why is that?" It is because the neighbour has a greater income than he has, but one has to explain that all the time. That rationale would allow for explanations having to be made all the time why one was getting more than another.

Mr. Cook: Exactly. There would have to be fairly clear board policy on exactly how this would be adjudicated by the board. What we admit here is that it is opening up a bit of a can of worms because it is giving the board a lot of discretion to decide how much these supplements should be. That is a danger we are prepared to live with because it is better than having no supplements at all, and having people ending up on only their small pension and CPP.

The other thing is that if our proposal that low back pensions be increased up to a maximum of 60 per cent then that would mean you would not have to pay out so much supplement because people would be getting a greater permanent pension. The two sort of go together.

Mr. Lane: Thank you for your explanation. I see you agree there is some danger there but it is better than the existing situation.

Mr. Cook: Yes, exactly.

Mr. Lupusella: Mr. Chairman, can I raise some questions or do I just have the floor to raise supplementary questions concerning those raised by Mr. McCombie?

Mr. Chairman: No, you can speak on anything on the rating of the pension supplements that they have just talked about. You have the floor.

Mr. Lupusella: Okay. The first thing I would like to raise is the position taken by Mr. McCombie in relation to the Canada pension plan. I sense that it is an urgent matter which the committee has to undertake to make sure that the policy of the board will come out before this committee and make sure that the

board will use just one standard position in relation to these issues.

In the past we have raised the issue in the Legislature about CPP and how the CPP affects the benefits of the injured workers regarding the supplementary pensions and it was my opinion that the policy was cleared. But now you have raised the concern, I have received letters in which the CPP was mentioned, as was the combination of CPP and benefits for supplement pensions, and so on. My humble request, and I hope it will be supported by the committee members, is to the Minister of Labour (Mr. Ramsay), who has been participating in these sittings. He should request from the chairman of the board all the papers which make reference to CPP on determining any benefits for injured workers.

I am sure the claims officers, rehabilitation officers, the pension section under which the supplement pensions are determined, must have policies already implemented by the board regarding this particular issue, and they would allow us to have all the material in front of us so we can scrutinize the content of this material. Also, from the Minister of Labour, based on what Mr. McCombie said, we would like to know the legal interpretation of the CPP and the supplement pension from the board. If the chairman has been requesting it, he has not got a reply as yet.

Mr. McCombie: We did get a reply. We had a meeting with the minister, Mr. Alexander and other board officials. In fact, it was the ministry office that suggested the board seek a legal opinion as to whether or not there was an explicit bar in the legislation to paying supplements when a person was getting CPP. We followed that up with a letter which, apparently, the board found too confusing. It said it could not understand what we were talking about. It was raised again by, I believe, the member for Kitchener-Wilmot (Mr. Sweeney) who raised it during the estimates. Again Mr. Alexander undertook that he would follow it up. All we got back was the letter that Alec Farquhar quoted this morning saying, basically, the board would do what the law tells it to do when it is passed.

Mr. Lupusella: Okay.

Mr. Cook: Sorry. Excuse me. With respect to the minister, I think we should also say that we had a recent meeting with the minister, Mr. Armstrong and Dr. Wolfson where we discussed this problem. Dr. Wolfson undertook to contact the board to find out what the problem was since the Legislature is giving clear direction to the board now as to what it should do. The Legislature suggests it should simply reverse its June 1983 policy and start paying the supplements again. Perhaps the member for Brantford (Mr. Gillies) or Mr. Cain has some idea if that happened.

Mr. Gillies: No, Mr. Cook. I knew you had a meeting with the minister, the assistant deputy minister and the other people at the ministry. There have been ongoing discussions between the minister and the chairman of the board on this matter, but I have not been part of those discussions.

The best I can tell you this afternoon is that I will pass



this along to the minister. I will bring this afternoon's Hansard to his attention and let him know of the concern of some members of the committee, so this can be responded to as quickly as possible.

Mr. Lupusella: If I may add to that, can we get copies of any written communication that has taken place, if it did, between the minister and the chairman of the board in relation to this request made by the organizations involved? If the present act does not make any reference to the Canada pension plan at all, I do not understand why the minister or the chairman of the board is looking for a legal interpretation of CPP and the impact of CPP on the level of benefits for injured workers.

As a result of this wrong policy, the board is interfering with something that is not part of the mandate given to the board by the present Workers' Compensation Act. I really do not understand what the legal interpretation should be when there is no reference in the act that gives the authority or power to the board to interpret such a thing as CPP.

Interjection: Professor Weiler.

Mr. Lupusella: This is a result of Professor Weiler's study of Bill 101, which makes reference to CPP. In the old act there is no reference to CPP, which means the board does not have any authority at all to develop policies on that. I do not understand why such legal interpretation must be sought by the chairman of the board.

At any rate, I would like to have all this material in front of us so we can clarify the situation once and for all. From one side we hear there is one policy. The minister is giving out a different story that he is not part of the board's policy. I think it is the mandate of this committee to clarify the situation once and for all, because injured workers are affected by it. I hope you are going to undertake this task and we are going to review the situation.

I have a question in relation to Mr. Cook's presentation and the reference he made to the issue of permanently unemployable injured workers. I was planning to raise this issue before you got on to this topic. I have the same concern as you. Whenever Bill 101 is going to be implemented, with all the protection that is given to injured workers to get a wage loss supplement, the board might develop the same position that is used now to send injured workers to COSTI or to other agencies and be defined as permanently unemployable people, which can be part of a plot being developed by the board as a policy package.

Even though there is an improvement in the wage loss supplement, whenever it is going to be implemented, this policy that will be in place when Bill 101 is implemented might bar injured workers even from getting a wage loss supplement pension for a wage loss.

What kind of safe protection can be incorporated into the act to make sure the issue of permanently unemployable people will



be settled by statute and not by people who are part of the staff of COSTI, coming out with a clear position that the injured worker is permanently unemployable? The guy who works at COSTI is not a specialist. He is not a doctor. He does not have any expertise on psychology or sociology or whatever. He is part of the staff, writing down the reports on a daily basis about the training course process of the injured worker. At the end of a six-week assessment, he comes out with the position that the worker is permanently unemployable.

I think it is a serious matter the committee should study. I share your concern, but I need guidelines from you about what we can do to make sure the same policy will not be in place in the near future by which injured workers will eventually be penalized from receiving wage loss supplements.

3:30 p.m.

Mr. Cook: When someone is termed unemployable, you have to ask a question: Is he unemployable or not? Some people are in fact unemployable. If you take someone who is 55 years old with a bad back who has no skills other than the skills he used to make a good living in manual labour, which he cannot do any more, that person could well be unemployable, especially in our job market. If that is the case, he should essentially get full compensation benefits. That would be accomplished under our subsection 45(9) on page 7 of our brief.

However, what I think you are referring to is that currently time and again people are called unemployable who are not unemployable. What those people need is good, effective rehabilitation. Instead of being called unemployable and just told to go away, get Canada pension plan benefits and leave everyone alone, those people should be provided with new skills by the compensation board. Whatever is necessary should be done to provide them with good new skills so they can go out there and become productive members of society again. What is happening time and time again is that people are called unemployable when they are not really unemployable; they have a potential for becoming employable if the board would only take rehabilitation seriously.

Mr. Lupusella: Therefore, I agree with you that the issue of the permanently unemployable should be spelled out in a statute or in the new act to make sure injured workers will not be barred from receiving wage loss supplements or supplementary pensions and so on, or else the board will develop this policy and I think we will be in the same boat again.

Mr. Farquhar: One part of the definition of unemployability that we try to deal with in rehabilitation is that right now the board will sometimes consider you unemployable even if you can do part-time work. There is a problem about part-time work, and our definition in the rehabilitation section that we are referring to makes it clear that some workers will be considered employable even if all they can do is part-time work. That will solve some of the problems, too, at places like COSTI-IIAS.

Mr. Cook: We are getting into rehabilitation there,

which was the next thing I wanted to talk about. Before I do, are there any other questions about the pension system?

Mr. Lupusella: Yes, on the clinical rating system. It is clear now that we ourselves are embarking on the creation of two classes of injured workers, the new one covered by Bill 101 and the old one. Your request for the old one actually is to make a provision within the act that will take into consideration the automatic indexing of the injured workers' pensions. I am sure this will not be enough, because this is what is taking place now even though there is no clear mandate by statute to increase injured workers' pensions on the basis of the cost-of-living increase.

You made reference to the clinical rating system, which should be revised, and we agree with that. Do you not think the clinical rating system, at the time the revision, the new rates and the new percentages of disabilities take place, should be retroactive to alleviate the problems of all injured workers who have been suffering injustices in the past and have been losing money as a result of their injuries?

Mr. Cook: Yes. In our proposal on the clinical rating, what I talked about mostly was the low back disability. Again, we are asking that instead of a maximum, as now exists, of 30 per cent for low back, it should be increased to at least 60 per cent, as is done in British Columbia. We are suggesting that as soon as the bill is passed and this is put into the language of the legislation, injured workers who are now getting a low back pension should be able to come again and be reassessed under the new rating system for low backs.

We certainly believe it would be only fair and just for the board then to say, "Okay, you were first injured in 1975; you have had a very serious low back disability. You have been getting 30 per cent from 1975 to 1984; you are now going to get a 60 per cent pension and a payback retroactively to 1975." We believe that would be fair for injured workers.

Because of the cost involved, we are not sure the government could do that, but we believe it should be done and that it would be fair for it to be done, and we would be delighted if it were done. We insist that just a bare absolute minimum is at least to start paying people properly from now on.

Mr. McCombie: Can I just add one thing to this? In 1972 the rating schedule was changed. I think the critical thing is that if the rating schedule is changed, then injured workers who have been previously rated have to be notified. The board did not notify people in 1972 that the rating schedule had changed. In some areas the percentages were increased.

There are probably thousands of workers in Ontario who are now eligible for a higher pension who do not know it because the board did not undertake to notify people that the rating schedule had changed. So there are now thousands of workers in Ontario who, if they knew about it, could go back to the board and get an increase in their percentage, but the board has refused to notify people of this change.

Mr. Lupusella: My understanding was--and I might be wrong; maybe Doug can interfere if I am--that in 1973, when the clinical rating system was changed, it was not retroactive, so the revision was implemented to take into consideration the injuries that took place after 1973. Am I correct?

Mr. Cain: It is my assumption that it dated from 1972, but I would have to look at the rating book. I truly do not know. I cannot say factually that did happen.

Mr. Lupusella: Maybe you could let us know about it.

Mr. Cook, you talked about survivor spouses. The injured workers made a presentation this morning on that question.

Mr. Cook: We will be getting to survivors.

Mr. McCombie: About eight o'clock.

Mr. Sweeney: I have two questions, Brian. The first one is with respect to your definition of "clinical impairment." You seemed to be suggesting earlier that, despite the fact that you wish it were not so, some form of ratings system seems to be necessary if we are going to end up with that initial pension for the accident itself or for the damage that was done by the accident. As I look at your definition of "clinical impairment," it does not give me any sense of what that rating system would look like. Could you elaborate just a little bit?

You might remember from our earlier discussions that there was a sort of review of various other jurisdictions that had similar rating systems. If I remember correctly, one that seemed to appeal to you, among others, was the one used in New York.

I am not sure if that is what you are referring to here. The way it is worded here, it would almost seem to me that a medical person could simply make an estimation, and that could be anywhere from zero to 100. What is it based on?

Mr. Cook: It is based on a rating schedule. The point of defining "clinical impairment" is again just to clarify what the pension is meant to compensate for, because right now the wording of the legislation is so vague that there is a lot of confusion about what it is there for. In practice, all it is there for is a socially arbitrary percentage that is assigned to disabilities.

The percentages would be derived from a rating schedule. We would like to have the board review the entire rating schedule, the whole meat chart for all disabilities, look at other jurisdictions and enter into some public debate and negotiation on what percentages should be assigned to certain disabilities.

We are not in a position to design a new rating schedule; that is something the compensation board should do. All we are saying is that what cannot wait is a new system for compensating for low back disability and that the legislation should say that pensions can be up to 60 per cent for low back disabilities. In the meantime, the board should engage in a scientific study and



public debate aimed at coming up with a more satisfactory rating schedule for other disabilities.

3:40 p.m.

Mr. Sweeney: In other words, I would read your present definition to refer to the existing scale.

Mr. Cook: Essentially, yes.

Mr. Sweeney: Of course, you would like that scale changed but your reference here is to the existing one.

Mr. Cook: Correct. That is right.

Mr. Sweeney: My second question goes down to your subsection 45(5) where you talk of a supplement to cover the difference. That, as I understand it, is your alternative to Professor Weiler's wage-loss factor. In other words, Professor Weiler's dual award system consisted of a lump sum plus a wage loss and your recommendation is the pension to counter the injury itself and then this supplement will take the place of the wage loss.

Mr. Cook: Not exactly. Our alternative to Professor Weiler's system is a dual pension system. It is totally different to what--

Mr. Sweeney: I understand what you want. I am looking at what you have here.

Mr. Cook: What this is responding to is Bill 101's provisions in subsection 45(6), which says that you get 90 per cent of the difference between your current earnings plus your pension and your former earnings. It is the difference between that and what you were making before the accident. All we are saying here is whatever that difference is you should get 100 per cent of that difference.

In subsection (6), as we were talking to the member for Algoma-Manitoulin (Mr. Lane) earlier, you would only get 90 per cent of the difference. That is what we are responding to here.

Mr. Sweeney: All right. We have had this discussion in various forms at previous meetings. I think you know I feel very strongly about some form of a wage-loss system because my constituents seem to suffer from that lack more than anything else.

If I read your subsection (5) here correctly, what you are saying is there would be three components. One would be pension, two would be the actual wages earned and three would be the supplement to make up 100 per cent of the previous earnings. Is that correct?

Mr. Cook: When somebody returns to work, that is exactly right.



Mr. Sweeney: I am reading subsection (5) correctly then?

Mr. Cook: Yes.

Mr. Sweeney: Subsection (6), on the other hand--

Mr. Cook: Subsection (6) is where you are not back to work.

Mr. Sweeney: You are not back to work, but in effect the same components would be considered, only there would not be any wages.

Mr. Cook: That is right.

Mr. Sweeney: So the supplement plus the pension would be the two components adding up to 100 per cent.

Mr. Cook: Right. As long as you are co-operating in looking for work.

Mr. Sweeney: In subsections (5) and (6), this is the point I want to be sure I understand correctly, or I am reading it correctly, the pension is one of the components that add up to the 100 per cent.

Mr. Cook: Yes.

Mr. Sweeney: You realize, of course, that was not the proposal made under Professor Weiler's wage loss. The lump sum and/or pension, whatever you want, was one side of the equation and the wage loss was an entirely different thing.

Mr. Cook: This is the difficulty I was trying to explain that we had in coming up with this brief. What we think should really happen is none of this. It is an entirely different system. However, we felt we could not come in here and say: "Throw this out the window and let us get back to where we were in the discussion prior to the bill."

Mr. Sweeney: Yes. In other words, this is your present day, realistic proposal, as opposed to what you really want.

Mr. Cook: Yes. If we are going to have a system that features pensions derived from a rating schedule and pension supplements, this is the sort of wording we would prefer. We see this as something that is not fantastically expensive. A lot of it is just clearing up the language and making the legislation very clear as to what we are trying to accomplish with these things.

Mr. Sweeney: All right, I understand. My last question is with reference to the use of the additional word "full" in number 10 on page 7. What makes you sense that is going to have any more impact than whether the word is there or not? As you say, or at least I thought I heard you say, there is an awful lot of discretion involved anyway, that adding the word "full" does not seem to me to make that much difference, but obviously you think otherwise.

Mr. Cook: It is just a little stronger. It would just make it a little harder for the board to pretend that inflation was only three per cent when, in fact, it was eight per cent or whatever.

Mr. Sweeney: But you do not deny the fact there is still a discretionary factor.

Mr. Cook: No. We are going to deal with an even better solution for dealing with indexing. It has been our position since day one that all earnings should be automatically constantly adjusted for inflation and that the board should keep track of the full effect of inflation on everyone's original earnings basis. Alec will talk about that after I talk about rehabilitation.

Mr. McCombie: We are open to suggestions as to different wording to strengthen the whole regard.

Mr. Sweeney: I just want to be sure I perceived it in the way you intended it to be perceived.

Mr. Laughren: I am having some of the same problems John Sweeney was having--this whole principle of wage loss versus what you would call a supplement. Whenever I talk to people who come into my constituency office near Sudbury, they dream about a wage-loss system and they say, "All I want out of life is my wages." They do not use the words "wage loss."

Would you find it acceptable if the pensions were retained--that was Weiler's big goof, this idea of the lump sum and then that is it. That was horrible.

If you had a pension or pensions--we could debate that, an ongoing pension and the projected wage-loss pension; one could come up with something there--if you felt there would be that ongoing lifetime pension, would you then be more receptive to something--if you want to call it a supplement, fine--which I or my constituents might call a wage-loss system? Would you be receptive to that?

Mr. Cook: That is what we are proposing. That is what is here.

Mr. Laughren: Right. But you used the word "compromise."

Mr. McCombie: A rose by any other name.

Mr. Cook: The key thing to remember, the main reason we were so horrified by Professor Weiler's scheme was the lack of security for the injured worker. Even with this wording, we are fairly confident the compensation board would find ways to cut people off their supplements. What is essential is to maintain that permanent pension so that no matter what else the board does for them, they will get that pension. That is coming out of years and years of frustration and anger at the compensation board at its tremendous discretion.

What we were so horrified about with Weiler's system was that the board would be deciding everyone's ongoing payments and one would not even have that pension one could rely on.

Mr. Laughren: The other thing that really bothered me about it was that somebody with a hearing disability, for example, could go back to work and never get another penny the rest of his or her life because there might be no impairment of earning capacity, but there would be no recognition whatsoever for that very serious social disability.

Mr. Cook: In our supplement scheme there would be three basic types of supplements. One is a full wage-loss supplement. If you are back at work and you have a loss of wages, 100 per cent of the difference should be paid; two, a full supplement which in combination with your pension equals 100 per cent if you are actively seeking suitable employment; then if you give up or the board says you are not co-operating enough or whatever, a smaller partial supplement in addition to your pension as ongoing compensation.

That worker would probably get a pension from the board, Canada pension plan benefits and some additional supplement. That is what would be accomplished essentially. Again, it is not what we think should happen for injured workers, but given a system that has pensions and supplements, it would be better than the current system and what is in Bill 101.

Mr. Chairman: We would like to move on to the next item, which is rehabilitation.

3:50 p.m.

Mr. Cook: It starts on page 9 of our brief. I will try to be a little shorter on this one. Obviously, pensions and supplements are the most important aspect of this, but we believe vocational rehabilitation, as we said when we came before you last year, should be the cornerstone of an effective workers' compensation system. Frankly, we are alarmed to see it is totally absent from Bill 101.

Effective rehabilitation means getting people back to work. The current rehabilitation system at the board is a total shambles in that regard. If it gets anyone back to work, it gets him back to minimum wage jobs. As people were saying this morning, the board will finally find you a job and a few months later that company has gone bankrupt or whatever. It is just a constant, never-ending search for some sort of job.

The other thing that happens under the current system is that there is no counselling. People need help. I think those people this morning got across very well the point that right now the board expects them to go out, totally on their own, and somehow find these jobs. They do not even get any support through counselling. The counsellors do not sit down with you and say, "Okay, let us look carefully at your life." They are not friends of the injured worker at all. They are perceived by the injured workers in most cases as enemies, people who are going to cut them

off their benefits if they do not co-operate. You cannot do it with a big stick. There has to be at least a carrot in there somewhere.

We were encouraged, when the report of the standing committee came out in December 1983, to see you people shared a lot of our concerns about vocational rehabilitation. In the majority report you said, "There was agreement amongst the members of the committee that vocational, as opposed to medical, rehabilitation programs provided by the board to injured workers, are in need of strengthening."

You went on in the majority report to contemplate a number of other important improvements to vocational rehabilitation, such as affirmative action--that came up a lot this morning--the idea of requiring employers to have a certain percentage of jobs available for injured workers, in particular the public sector over the which the government of course has more immediate control. At least the Workers' Compensation Board should have some sort of affirmative action program, but it does not.

However, the majority report went on to say, "The majority of committee members concluded, however, on this matter of section 36"--which in the white paper's draft bill was a new section dealing with vocational rehabilitation--"that whereas they endorse the strong initiative represented by the draft legislation, specific changes in the wording should be dealt with when the bill is actually presented for consideration." Now that the bill has been actually presented for consideration, there is nothing there about rehabilitation.

The minister said yesterday morning in his opening remarks he intends to deal with rehabilitation in phase 2. With all due respect to the minister, we cannot understand why what is almost the most critical area here, rehabilitation, should wait for this phase 2, whenever that might be.

Members of the committee will also remember that the representatives of CUPE 1750, the local which represents the unionized employees of the compensation board, came out with a brief during the committee's last sitting that was just a scathing indictment of the current administration of rehabilitation at the board. Those counsellors, the very people who were supposed to be helping injured workers get back to work, were saying publicly they could not do their job because of the restrictive policies of senior management. It is not just us, it is not just injured workers who are convinced that rehabilitation is not working, it is the vocational counsellors themselves.

We also recall that senior officials of the board at the time were, to put it mildly, vehement in their attacks on CUPE 1750. It is that very vehemence on the part of the board that things are going so well that demonstrates why immediate legislative change is necessary. The current legislation allows the board to do almost anything in terms of vocational rehabilitation.



It says the board may make such expenditures as it deems necessary. It is extremely open-ended. They are not doing anything right now and their response to the criticisms is: "Everything is fine. Those are just a couple of angry employees."

The views expressed by the Canadian Union of Public Employees, Local 1750, are very similar to our experiences and the experiences of injured workers in dealing with the board. You cannot just leave it to the board to devise new rehabilitation measures. There has to be some legislative action to make it clear to the board that it cannot just do nothing for injured workers and that it has to take rehabilitation very seriously.

Most of what is on page 10 comes from section 36 of the white paper. I will not go through all of it, but just the first part, the main things we want the board to do.

We propose, "The board shall take such measures and make such payments as are necessary to assist an injured worker, (a) in returning to suitable full- or part-time work." The addition of part-time work is very necessary because the board often will not help people find part-time work. People would often be more than happy to find a part-time job as that is all they can do because of their disability, but the board says: "No, we will only help you if you can do full-time work. If you cannot do full-time work, we are going to call you unemployable."

It also has to be suitable full- or part-time work. Section 36 of the white paper did not have that word "suitable" in, and neither does the current language.

We also want to force the board "(b) in lessening or removing any handicap resulting from the injury; (c) in returning to a normal family social life; (d) in achieving noninstitutional accommodation...."

It goes on. As I say, most of this come from the white paper itself. We add a couple of things on page 11 under subsection 3, preventive rehabilitation.

Think of the common sense, money-saving argument that if someone is in a situation where it is obvious if he keeps in that situation he is going to develop a disability, why not assist him through rehabilitation to get out of that dangerous environment and find him another job before he develops the disability? Right now you have to be disabled before the board will help you. If you are disabled, you have all those medical bills, you are off on temporary disability, you have a pension and so on.

All the money that has to be paid out to the injured worker, let alone the suffering the individual has to go through with the disability, could all be avoided by simple preventive rehabilitation to help people before they become disabled.

We clearly want the board to help people find suitable work, as we have defined it. If, however, they cannot find suitable work as defined, they can help people find work that is less suitable as long as, under our subsection 4, the worker will not be at undue risk of further injury or recurrence.

Finally, under subsection 5, "Where in the opinion of the board it is demonstrably unreasonable to assist the injured worker to return to any form of work, after reasonable efforts to do so, the board shall advise the injured worker of its decision in writing and the injured worker shall be eligible for the benefits described in section 45."

This language would not accomplish a great deal to improve rehabilitation in itself. What it would do, though, would be to give the board a very clear direction that it has to get its act together and start taking rehabilitation far more seriously than it is now.

The other thing we were alarmed to see disappear out of the process of coming up with new ideas to help injured workers was the white paper proposals for return-to-work provisions. You will recall that Professor Weiler came up with a scheme that was contained in the white paper that injured workers would have certain limited rights to return to the old job or to a job with the pre-accident employer.

4 p.m.

It just makes simple and economic common sense that the employer who injured the person should have some responsibility to find a job in that same establishment, if it is at all possible, for the person who has been injured in that establishment.

We had some concerns at the time, which we noted in December 1983 were shared by the majority in their report, that the collective agreements be allowed to provide better return-to-work provisions that were outlined in section 25 of the white paper legislation.

We would like you as a committee again to take a look at that section 25 of the white paper legislation and ask yourselves whether it would not make sense to put that back into legislative form right away without waiting for phase 2, whenever that might be.

If phase 2 is going to look at benefits, rehabilitation is separate and cannot wait. People who were there this morning were talking a lot about rehabilitation and about how horrible it is to have to look for work with virtually no support from the compensation board. That has to end.

You cannot tell the board exactly what to do in every case, but at least you can make it very clear in the language from the Legislature that you expect them to take rehabilitation very seriously.

Mr. Sweeney: With reference to the last question raised about the return-to-work provisions, it would be so easy to say an employer has to take the employee back, simply to make a flat statement like that. But we are both aware that there are situations where it simply could not be made to work.

Do you have any sense from your experience as to the size of

the work place with reference to the number of employees? Again, I am just asking you to relate your own experience or the experience of your group, where you might be able to make a statement like that. In other words, is it 100 or more, or is it 50 or more?

At what size could we make it a social responsibility, in your judgement? And it is workable? There is no sense passing legislation that simply is not workable. What size of work place?

Mr. Cook: I have one comment. I know other people do as well. I am not sure it is the size of the work place that is the crucial factor so much as the type of industry. In certain industries, like construction, there is no--

Mr. Sweeney: Construction and the back injury, for example?

Mr. Cook: Yes. There are not very many jobs that can be created in construction to accommodate someone with a low-back disability, whether it is a company that has 15 people or 115 people, whereas a factory with 10 employees could well accommodate someone with a low-back injury just as easily as someone with 100 employees. It would seem to be more of an industry type of problem. That would be my feeling.

Mr. McCombie: If I can respond, I think there is another element involved here; it is basically a political element or an ideological or social policy element. If you just say to employers that we will look at the lowest common denominator or the highest common denominator, if you like, the largest number of employees, and we will ask that those employers take workers back, then it keeps going on to a higher number because you might be in mining, logging or construction.

I tend to think, and I think this has been borne out in other social policy issues, that if legislators say, "You have to take an injured worker back; you have to do everything you can to create a job for this person who has worked for you for two years"--or five years or 10 years, whatever you want to say--I think you will find with that kind of onus on the employers, they will discover miraculously, all of a sudden, that there are jobs injured workers can do.

What I am saying is that there has to be a lot of pressure put on employers by the Legislature, not by public spiritedness or whatever, because it seems to me the way things operate is that unless there is that pressure, things stay the same. When the federal government brought in equal pay for work of equal value, everybody screamed and said it would not work. When that kind of pressure is brought to bear, it does work because it has to work.

Obviously there are going to be situations where there are work places to which an injured worker with a specific injury cannot return. We can all admit that. But you get into a very difficult area when you start trying to judge. The onus should be on the employers to prove they do not have work that is suitable. The onus should be on the employers to provide it in whatever way possible. If you put that pressure on them, they will come up with jobs



Mr. Lupusella: Would you be happy with the inclusion of the words "wherever is feasible"? That takes into consideration the concern raised by the member for Kitchener-Wilmot (Mr. Sweeney).

Mr. McCombie: Personally, I would like to see--and this is something the association itself has not discussed in great depth--something much stronger. I would like to see the right in there, and perhaps a corresponding right or provision for an employer to appeal taking someone back and having to prove there is absolutely nothing in that work place the injured worker can do, the burden of proof being on the employer, making it a policy statement saying that employers have to take back workers who are injured. It would be a presumption that there is a job there and it would be a rebuttable presumption if the employer proved there was no such work available.

Mr. Lupusella: I have problems with the words "unlimited right." That means so much. I would eliminate "unlimited" with the word "right," by maintaining the words "right wherever is feasible," the right to go back to the old job wherever it is feasible.

As Mr. Sweeney said, there are companies that are family business operations with two or three people working on that operation, plus two employees. Maybe it is not feasible to force that employer to rehire a person. There is no feasibility there. There are companies--and I share your concern--which because of their size can create light jobs, and they should give the light jobs to injured workers. The feasibility issue might take into consideration the concern raised by Mr. Sweeney.

Mr. McCombie: Part of the underlying theme of much of what we are saying is that for the last 70 years the burden has been on injured workers, the burden to find light work, the burden to prove their disability, the burden to prove that their disease arose from the work place. We are saying that 70 years is enough. Let us shift the burden. Let us put the burden on the board. Let us put the burden on the employers. They can deal with it much better.

It might be painful, but it is going to be a hell of a lot less painful than it is for the thousands of individual injured workers. Let us put the burden on the employer and say: "You have to take this person back. If you have a legitimate reason not to take him back, we will consider it as a board." That is the way to go. We have to shift that burden. It has been placed for far too long on injured workers.

Mr. Lane: Mr. Chairman, I have a supplementary on Mr. Sweeney's first question. Mr. Sweeney asked about the size of the company and the number of employees. There is the other side of the coin there. That is a rather important question, somehow or other at some point to feel there is opportunity within that company to take that worker back.

When a worker is injured, the employer has to go out and get another worker to fill that vacancy; maybe it is for a two-year



period. Let us say he finds someone who is doing one hell of a good job. Two years down the road he has to go to that somebody and say: "Too bad, buddy, but you have to go. The other fellow is coming back." At that point, the other fellow cannot do as good a job as the employee he took on is doing. Small business is having a fairly difficult time surviving. We have to look at that aspect of it as well.

Mr. Cook: With regard to section 25 in the white paper, there are two situations. One is where the person can come back to perform the essential functions of the employment being performed at the time of the injury. In other words, if you could come back and do essentially the job you were doing before, you should have a right to go back.

It would seem to me that the employer who had injured someone--

Mr. Lane: The employer did not injure him. He got injured while working for the employer. He did not injure him.

4:10 p.m.

Mr. Cook: Okay.

Mr. Lane: The employer did not injure him.

Mr. Cook: Not personally, no. He did not go out and injure him.

Mr. Lane: You have said that a couple of times this afternoon and it is not really correct.

Mr. Cook: Where someone has been injured working for an employer and can come back and do essentially the same job, he should have that right. There would be problems with it, and it seems to me the solution is that the employer would have to hire the replacement on a contract. The terms of the contract would make it clear whether the substitute was filling in for the person who was off on disability and who might be able to come back and take his old job back.

Mr. Lane: The point I am making is that you would not get the best help under that type of agreement. Obviously the substitute knows it is only a short term with no future for him, so he does not apply or does not apply himself to the job. Either way the employer is going to suffer some loss.

Mr. Sweeney: Surely the fundamental issue, John, is the principle we are trying to enunciate. If a person, man or a woman, gets injured in a work place, assuming it was through no fault of his or her own--I cannot believe that anyone deliberately injures himself or herself; so let us start with that assumption--then that person has a fundamental and a prior right to a job in that work place. That right surely must supersede the right of any other employee. Either we agree or we do not agree with that fundamental principle.

Mr. Lane: I do not disagree with it, but I say there are two other problems here.

Mr. Sweeney: I agree with you that there are, but any time you have a prior right, there is always the possibility of other rights being interfered with. That is the decision people always have to make: What has to come first?

When you have three or four conflicting rights, you have to make a decision that one right takes precedence over the others. It does not mean that the other people do not have rights, that the employer does not have the right to a certain kind of worker and that the substitute does not have certain rights. Sure, they do.

Somewhere along the line a decision has to be made, and I guess that is our job, to say one of those two or three actors in this play has a prior right. It seems to me, both from our previous discussions and from this discussion, either we can or cannot--and I suggest we can--agree that the injured worker has the prior right. You may or may not agree. If you do agree, then the subsequent rights have to take second place.

Mr. Lane: I do agree, but I see other problems as a result of agreeing. I also think there has to be a period of time where it is no longer required of the employer that the employee comes back.

Mr. Sweeney: Sure, you might have a cutoff. I think we talked about two years the last time. We said that right should exist for two years. I cannot remember all the details of why we settled for two years, but we did have a fairly lengthy discussion on it.

May I ask one other question? If I recall correctly, both this year and last year a number of the people who spoke to us at that large meeting made reference to other jurisdictions, particularly in Europe, where there was a stronger right of recall. To the best of your knowledge, have any of those been investigated to see whether they could be applicable in this jurisdiction? Or are there different situations that make them not applicable? I do not know.

Mr. Farquhar: I know the board has looked at Britain.

Mr. McCombie: If I am right, there was a report from Britain recently, not specifically on the rights of injured workers. There is a quota system for the disabled which, it was my understanding, arose in connection with the war-disabled. It was part of the sweeping social changes--

Mr. Sweeney: I am familiar with that one, yes.

Mr. McCombie: I believe five per cent of more than a certain number of employees has to be reserved for the disabled.

Mr. Sweeney: Mr. Chairman, may I ask Mr. Cain if he is aware of any investigation undertaken by the board into other

jurisdictions that have a right-of-recall provision that is different from ours or that could be applicable here? Has such an investigation taken place?

Mr. Cain: Not that I am aware of.

Mr. Sweeney: The only reason I raise it is that in two successive years now it has been brought to our attention, and I am not aware of the fact that we have done any investigation or review.

Mr. Cook: The person who should have done the investigation is Professor Weiler. Here he is assigned to do a complete study of workers' compensation and he essentially totally ignores rehabilitation. That was a shocking omission on the part of Professor Weiler, and that is why we are here now. We do not have the time and resources to go and find out what exactly goes on in European jurisdictions.

Mr. McCombie: We are open to being sent there.

Mr. Chairman: I am sure you are.

Mr. Laughren: That is an indication of why the legislation has to be very specific and tell the board what to do, because the board will not do it.

Mr. Cook: That is right.

Mr. Farquhar: There is another good statistic here. Perhaps I could put this to Mr. Gillies, as we have, I think, to the minister before. We do not even have the results of the survey the board did on unemployment among injured workers. We have little snippets of information about this survey, which was done, I believe, in 1981, through pension cheques. The results were that out of 80,000 pensioners, 40 per cent of those under age 65--that is, around 20,000 people--declared that they were unemployed. That is 40 per cent of the employment-age pensioners.

We have been asking for the results of that survey through the committee, through the minister and through the board for three years and we still do not have it. We have alternatives, but we do not even have the absolutely basic information we should have on the employment situation of injured workers as a class. Every year we have the board's annual report, which gives us the number of workers rehabilitated that year, but we do not know how many of them stay on the job. We do not have the basic studies to reach the kind of decisions we are being asked to reach, and I might ask Mr. Gillies to take another stab at getting these results for the committee. It might be a pretty valuable piece of information.

Mr. Gillies: I will certainly look at that for you. Going back to Mr. Sweeney's original point, though, I would caution you that when you get into the whole area of preferential recall rights, what you are talking about goes well beyond the mandate of the Workers' Compensation Act. I am not necessarily disagreeing with your position, John, but I would remind you that the replacement worker has right

wrongfully dismissed. The Employment Standards Act sets the bare minimum, and in many cases the collective agreement goes well beyond that.

Once you get into this area it is very tricky. Let me give you an example not quite on this subject but in the area of the discussion paper that the ministry did on on the subject of preferential recall rights in the case of an employee who was displaced by the shutdown of one plant where there were multiple plants in the province. That was put out for discussion, numerous problems were brought to our attention and there were very strong objections to the idea. I might add that many of those objections came from the labour movement.

Mr. Laughren: Oh, boy! Talk about mixing apples and oranges.

Mr. Gillies: I am not prejudging, Floyd. I am just saying that if you got into this whole area of preferential recall, you would find it is probably much more complicated and there would be many more objections to it than you might think.

Mr. Sweeney: But we are not talking here of bumping a person who already has a job; we are talking of someone who comes in on a short-term, understood contractual basis to replace someone who was expected to return.

If you want, I can think of a model, and that is pregnancy leave. When a woman goes off for pregnancy leave, whether it is the mandatory 17 weeks or some other period of time that is agreed upon, the person who comes in to replace that woman knows he or she is coming in for a definite contracted period of time and when that woman chooses to return to work, if she does, then she goes back to that job.

I will admit that the parallel is not exact, but it certainly suggests to me that you can come to those kinds of agreements and you can legislate them, as opposed to the one you are talking about, where there are two people who have a job and have had it for a considerable period of time and then one earns the right to bump the other person out. That is another situation altogether.

4:20 p.m.

Mr. Cook: There is no doubt that there will be problems with any scheme like this. But bear in mind that there are an awful lot of problems in not having anything like this and that the difference is who bears most of those problems. Right now it is the injured workers.

You heard today that even people working for mammoth corporations with thousands of employees, those companies will not bother to find a job for people. Why should they? There is nothing compelling them to do so. What that means is that all the problems are left to the injured worker to go around and try to find some other job. It is virtually impossible to do that.

Mr. Gillies: As I said, I did not necessarily disagree.



into this area, it would require revision not only of the Workers' Compensation Act but probably the Employment Standards Act. I am suggesting to you that if and when we head in this direction, I would predict it would cause some more problems and more controversy than you might imagine.

Mr. Dee: Something you cannot forget when looking at this area is the responsibility for the original accident. I know Mr. Lane did not like the term "the employer had injured a worker." Quite correctly, that is not the proper way to look at a work place injury. However, we cannot forget that under our system of production the employer decides what company or he or she personally will invest in and what they are going to produce. They decide how they are going to produce it. They decide the speed at which it will be produced. They control safety and safety information provided to the workers in the work place.

The employers are the ones who can do the most in this area to cut back on accidents and improve the safety record. When it comes around to preventing accidents, preventing the problems we are talking about, employers know they will have to clean up their own mess, clean up the mess their decisions brought to us.

There are many more accidents in mining than in banking. If they decide to go into mining instead of banking, they should recognize the costs. At all times, we should be trying to make employers come to grips with the different results that will occur according to the decisions they make about what they are going to produce and how they are going to produce it. It is their decision. We may have a better economy for it, but in all these circumstances, we have to ask those employers to come to grips with their costs.

If that means putting a burdensome employee back on, somebody they regard is a pain because they do not know what they will make him do, I do not find any particular problem with that. It was that employer's decision, and not malevolent decision. It was a business decision that caused that problem or that resulted in that problem. So looking at it in that perspective, there is no great difficulty about making sure that employer looks after that problem once it has been created.

Mr. Chairman: We did have a cancellation from the delegation that was to appear before us tomorrow morning, J. M. Brown, whoever that person is, which would leave an opening tomorrow morning. If you people would like to come back tomorrow and complete your presentation and our questioning between 10 and 12:30 that would be appropriate.

Mr. Cook: Perhaps we could finish quickly with the topic of indexing before we leave today.

Mr. Chairman: I would like to have a few minutes in camera with the committee to discuss our travel arrangements for next week. We can start with indexing as the first item tomorrow.

Mr. Cook: Fine.

The committee continued in

CADON  
XC13  
- 578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, JULY 18, 1984

Morning sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakubski, P. J. (Renfrew South PC)

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister  
of Labour (Brantford PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Welton, I., Senior Liaison Officer, Program Analysis and  
Implementation

Witnesses:

From the Association of Injured Workers' Groups:

Cook, B.

Dee, G.

Farquhar, A.

McCombie, N.

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, July 18, 1984

The committee met at 10:14 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: Good morning, ladies and gentlemen. We have a quorum and we would like to get under way.

Before proceeding with the next stage, the indexing, Mr. Cain has distributed a booklet entitled Permanent Disability Rating Schedule, which was discussed yesterday as to date of effectiveness and so forth. Mr. Cain, I wonder if you would like to elaborate on the distribution of this book.

Mr. Cain: Mr. Chairman, I just want to respond to two or three questions that came up yesterday on the subject of the disability rating schedule. First, you will notice that it became effective on February 15, 1972, so it was not retroactive. Second, a question was brought up and I believe it was said that in British Columbia they would pay as high as a 60 per cent pension for back disability. If you would refer to page 13, it says total immobility of the spine is 60 per cent. The comment is made and the percentage is pointed out, but I want to say something more general.

This rating schedule is basically followed for amputations, so if you get a specific type of amputation at a certain level and it is recorded in this booklet, it tends to follow along pretty precisely with what is said. When it comes to back disabilities or other problems, shoulders, knees or even amputations where there are other ligament problems and so forth, the schedule is then only a guide and the percentages are not necessarily adhered to precisely.

Although there probably are not very many, there are injured workers with back disabilities who are receiving a 100 per cent pension. I only mention that to describe that this schedule is a guide and not used precisely.

Mr. Lupusella: With great respect, when you are talking about a 100 per cent back disability, because the spine is immobile, you are talking about cases where an injured worker has three or four or even more discs which have been fused and therefore there is no mobility at all. That means the person sometimes even has difficulty sitting and working with his hands. We are faced with rare cases like that, where a person has a few discs fused and he is receiving 60 per cent of back disability, based on my own experience.



Mr. Cain: Mr. Lupusella, I was not trying to convince you that our pensions are fair or not fair to your mind. I was simply pointing out the way the schedule is used.

I would also mention that almost precisely this is the rating schedule across Canada for all provinces because it was all provinces in Canada that originally got together and created this schedule. It was not Ontario in isolation from anyone else.

Mr. Lupusella: The other reason I was concerned about finding out whether or not the revision of this written schedule was retroactive was in view of the fact that all the other injured workers who were injured and received permanent disability pensions before 1972, with the same degree of disability, did not receive the same percentage. That means the percentage plays a big role in the total amount of money they receive on a monthly basis. Even though the injured workers had the same disability, there was a difference on the total regarding the monthly pension.

As my colleague has stated several times, each time there is a change in policies of the board, because this is part of the board policy, we are creating different classes of injured workers, and he is right. So all the injured workers who got permanent disability pensions before 1973 receive less money in comparison to the people who got injured after 1972 when the revision took place. Am I correct?

Mr. Cain: Wherever there was a change in the level, you are quite right, yes.

Mr. Lupusella: Which means you agree with that. When there is a policy change like this, which is a major board policy change, we are creating different classes of injured workers.

Mr. Cain: I am agreeing the new schedule became effective on a certain date for all permanent disabilities after that date, yes.

Mr. Lupusella: Thank you. I have another point I would like to bring to the attention of the committee, if I may.

Mr. Chairman: Yes, Mr. Lupusella.

10:20 a.m.

Mr. Lupusella: Thank you. Mr. Chairman and members of the committee, I think you will recall we had several discussions in the past about the treatment of the old injured workers and the attitude of the board in dealing with their cases.

I would like to bring one case to your attention as a matter of urgency, and I would like the committee to instruct Mr. Cain, through the chairman and the Minister of Labour (Mr. Ramsay), to take into consideration the commutation issue of this man. It is urgent because he has a mortgage of \$40,000 on his house. He is receiving two pensions for his back, and I requested, through correspondence with the board, a partial commutation of the two pensions for his back to pay off the mortgage on his house.

I brought it to the attention of the people at the board, and I think even the chairman was notified with a carbon copy to the Minister of Labour--I will bring the case down later as I do not want to be mistaken, but I think I sent a carbon copy to the minister. Incredibly enough, half commutation of the two pensions means the injured worker would receive half of his pension for life if the commutation is granted by the board.

Through calculation, with half commutation of the two pensions he will be able to pay off the \$40,000 mortgage on his house. We know how mortgage rates are going up now, and I think he will be in serious trouble.

This man is under tremendous stress. He is working, he was able to find a light job, but he is under tremendous stress because his mind is on the mortgage and the insecurity of losing his job some day and he will not have enough money to pay off the mortgage but will have to renew it.

The board rejected the principle of commuting half of the two pensions. They said he has a job and is quite secure and there is no need for a commutation. I appealed their decision and they gave me a date for the appeal around September 12, 1984. He has to renew the mortgage in October, so nothing can be done until the hearing takes place and the decision of the adjudicator is rendered. If the decision is favourable, he will not have time to get the money from the board but will have to go to a bank or wherever to renew his mortgage.

I think it is unfair and I would like this committee to give a clear mandate to Mr. Cain to review this case. We are not fighting for recognition of a disability, the disability has been recognized and he has been receiving two pensions for at least four or five years, the man was able to find a light job and he wants to pay his mortgage, and we are asking for half commutation of the two pensions. The adjudication branch rejected our request.

I think it is unfair. We are not fighting for recognition of a higher disability. What we want is part of his money to pay off his mortgage. It is a simple request. We are trapped by stringent and tough policies of the board which do not give an opportunity to people to get at least half of the money to pay off the mortgage. If there is a general agreement from this committee that it is an urgent matter, I hope the chairman and Minister of Labour will take a look at this case. I do not see the need to go through the appeal system for a request such as this.

Mr. Watson: I appreciate what the member is saying, but if we are going to discuss that in committee, I would like you to give me time to go back to my office and bring my commutation problem to you. If that is what the committee is going to do here, I have one and I know Mr. Havrot has one. If this committee is going to handle individual cases, I have one with a mortgage that I am sure is just as urgent as that one.

Mr. Chairman: We have specific directions in this committee. I understand what the member is saying, but I do not know what this committee can do. We were not brought together to

discuss individual cases this summer. Certainly, I understand the situation. I would be just as mad as you are if there was a situation with one of my constituents. I would be fighting for them.

I am afraid this committee cannot take action. It is in Hansard now and perhaps the parliamentary assistant will take it back to the minister and Mr. Cain to the board and dig into this. I do not want to get involved in individual cases. Also, we have a delegation here.

Mr. Laughren: I do not understand what Mr. Lupusella wants. Do you want the decision overturned or do you want the appeal date moved? What is it that you would like done?

Mr. Lupusella: First, I do not see a need for an appeal. I do not understand it. We discussed in previous hearings what the government should do in relation to old injuries. I do not think I am completely out of order. When we wrote the report, we touched upon the new injuries and the old injuries. That was part of our mandate. We used examples of how the board's attitude is operating within the present framework. I do not think I am completely out of order. I do not know if you were around when the majority report was written.

Mr. Watson: I am not saying whether you are out of order or not. If you are not out of order, I have one that is just as important. That is my point. I have a man who wants to buy another house, the deal is pending, and the board will not commute. Do you want to discuss the principles of whether or not an individual who requests the board for commutation should have that choice? That is one thing.

Mr. Laughren: He is not trying to run your life.

Mr. Watson: I am going to have my turn at my case if you are going to have your turn at yours.

Mr. Laughren: Fine.

Mr. Lupusella: I do not have any objection to your making the same request.

Mr. Chairman: That is not what I thought the committee was for.

Mr. Lupusella: I do not have any objection by any means, if you have an urgent matter. I think the committee has a duty to understand what the present process is all about. We are discussing it. I am using this case not only to enlighten the committee members about the situation that is taking place and the board's attitude in dealing with injured workers, but we are also faced with an urgent matter in that this man's hearing has been set for September 12. I was in touch with the board and asked if there was any way to anticipate this hearing before September, but no.

The deal has to go through--not a deal to buy the house but



to renew the mortgage. He has been living in this house for at least five years paying the mortgage. He has to renew the mortgage in October. It will be September 12 before the decision will be rendered.

I do not see, first, a need for a hearing. Second, if a hearing has to take place because the decision cannot be reversed differently, I do not mind having a hearing in August. It would give time to the adjudicator to render a decision and it would give time to the injured worker to go and shop around for a mortgage.

Mr. Laughren: Mr. Chairman, would you let me move a motion?

Mr. Chairman: I would like to recognize Mr. Sweeney first.

Mr. Sweeney: Mr. Chairman, I am sympathetic to the issue that is being raised by Mr. Lupusella. The problem, however, as I see it is that we in this committee have no power to adjudicate the decision.

We certainly have the power to request Mr. Cain to take back to the board the concern that has been expressed here to see if anything could be done. Again, I am in the same dilemma Mr. Laughren is. I do not know what Mr. Lupusella expects the committee to do. We do not have the power to make the decision. The only power we have is to ask a representative of the board to please look into this again to see if it can be expedited. If that is what Mr. Lupusella is asking for, I would be quite prepared to support him in that. If he is asking us actually to do something, I am not aware that we have any power to do anything. That is my difficulty.

Mr. Gillies: Mr. Chairman, if I can be of some help in this matter, I will say to Mr. Lupusella that I have just conferred with Mr. Cain. If you would provide us with some details on this case, he would be pleased to investigate it for you. That goes for any case any member of the committee has. Whether you approach us after, before or during a hearing, we are pleased to be of assistance.

Mr. Laughren: Would you accept a motion then, just to take it one step further, that this committee urges that the Workers' Compensation Board overturn its previous decision to reject this commutation so that this man may pay off his mortgage? I would so move.

10:30 a.m.

Mr. Sweeney: I do not know the details of the case. I am sorry. There may very well be, and I have no way of knowing it, some valid reason for rejecting it. I find myself in the very awkward situation of being asked to make a decision on the basis of very little information. I do not feel I have the ability to make such a decision. If it turns out that our recommendation is the wrong one for this man, I--



Mr. Gillies: Might I suggest that anything you ask of us, we undertake to get the information, and it is part of our duty to report back to the committee anyway. Could I suggest that Mr. Cain be given an opportunity to investigate the matter and bring back the board's position on it? If that is not satisfactory to you then, Tony, perhaps that would be the appropriate time, with the committee having some more facts at its disposal, for a motion.

Mr. Lupusella: Okay.

Mr. Sweeney: That I could accept.

Mr. Lupusella: Going back to the principle of commutation, and this is part of our mandate as well, the position of the board to reject half of the commutation--not the total--of the two pensions was that the man can manage within the framework of his present condition with the funds to pay the mortgage and to renew the mortgage without assistance of the commutation of his two pensions.

Mr. Chairman: I understand what you are saying. We all have concerns on the commutation business. However, we have a delegation here this morning. I do not think we should be discussing this at this time and taking up their time. After today we will not be able to sit with this particular delegation. There will be time in the clause-by-clause discussion perhaps to get into the whole principle of commutation but not today, please.

Let us move back to what we are here for this morning, indexing of pensions, the Association of Injured Workers' Groups.

#### ASSOCIATION OF INJURED WORKERS' GROUPS

Mr. Cook: Before we get on to that, I have a comment. We do not want to get into a discussion about this, but I want to refer to some of the remarks of Mr. Cain with respect to the total schedule for low backs. He suggested there are injured workers who have a low back disability, and that is their only entitlement from the board, who are getting greater than 30 per cent. In fact, from our experience, if someone is getting greater than 30 per cent for low back disability, it is because he has some other entitlement.

For example, their low back disability may be affecting their legs, in which case they would get additional pension for that disability. Very often, when someone is getting 100 per cent and his disability is low back, he has entitlement for psychological disability. So he is getting extra pension for that. It is very rare that someone whose only entitlement is for an organic low back disability gets more than 30 per cent. That is from our experience. We do not want to get into it, but we feel it is quite an important point.

Mr. Farquhar: As an introductory point, we have added to the end a brief wrapup that Brian Cook will be giving. When we have gone through all the subjects today, we would hope to have at least 15 or 20 minutes left to go over our main points. One thing we are afraid of--

Mr. Chairman: It is pretty well up to you whether you have 15 or 20 minutes left.

Mr. Farquhar: Also to some extent, we are hoping we can hit our main points today and that the committee members can respond to those and think about them. In many areas there will be more complicated points we will not have time to go into. One proposal we raised yesterday, which we raise again, is that the points on which you want more clarification or details or more ideas, we would be glad to follow up with another written document or a summary of our position, something that would be useful to you in the clause-by-clause consideration in September.

Mr. Laughren: Are you suggesting that you prefer to go through your brief without discussion on it at this point?

Mr. Farquhar: Not at all. We want discussion. We are just trying to say there are so many subject areas here that we hope to be able to hit all of them and that discussion be more or less to the point.

Mr. Chairman: We are off and running. We have about a two hours.

Mr. Farquhar: With respect to indexing, as we said yesterday, one of the main irritants and points that has made injured workers very concerned and angry about Bill 101 is that once more we have an amendment package to the Workers' Compensation Act without an automatic cost-of-living adjustment clause.

I know the minister referred to this in his opening statement on Monday, saying he felt we had to leave the question of cost-of-living adjustment to phase 2 because it was more or less intimately linked with the dual award system.

With all due respect, the Association of Injured Workers' Groups and the injured workers do not see that link at all. It is very interesting in this light to note that the Workers' Compensation Board has recently decided, or is on the point now of deciding, to fund the act as if the act was cost of living indexed on an automatic basis. When the board itself is going to be charging employers rates based on an indexed act, we do not see the reasoning in delaying any further the introduction of automatic indexing into the act. That is our general position.

What we have had in the last period of years is a constant situation where injured workers have had to catch up to the inflation rate. We appreciate that during the last few years the Minister of Labour has brought in cost-of-living increases much closer to the appropriate date than many of this predecessors did, but I would like to remind the committee that in 1978 we had a cost-of-living increase that the workers had to wait three full years for. They went three years without a cost-of-living increase. Then for 1981 there was another period of almost two years without a cost-of-living increase.

Therefore, we have had in the past significant delays in cost-of-living increases, even though over the last 10 years we have kept reasonably close to the consumer price index increase.

This is a totally unneeded burden and point of anxiety for thousands on workers' compensation, especially pensioners. We do not see why Bill 101 lacks that automatic indexing provision. We note that with the standing committee itself, in the December 1983 final report, at least the majority approved the indexing proposal that was in the white paper.

We did not like that indexing proposal because we felt it left the percentage of increase up to cabinet and up to cabinet's discretion, rather than having it automatically tied to the average industrial wage which is the way it is done in other jurisdictions. However, at least the committee endorsed some kind of more or less automatic indexing. Of course, Professor Weiler in his initial green paper proposed an even more automatic system, which he later retreated from in testimony before this committee.

In that situation, we are asking that you as a committee carefully consider adding an automatic indexing provision to the bill as one way to show injured workers that we are taking a key area of the matter out of the political arena once and for all. I think that would benefit all parties and hopefully would reduce the level of distrust that injured workers have towards this whole system.

Mr. Chairman: Are there any questions on that topic?

Mr. Laughren: Mr. Chairman, the question is whether the government members are prepared to make that recommendation at the time of clause-by-clause discussion and to think about accepting an amendment that would make this a reality. It really is a paternalistic view of injured workers to have them camp with tin cup in hand outside the cabinet office every year, waiting for the indexing to fall into place.

I know we are not on clause-by-clause debate today, but I really hope the government members will think seriously about that. I believe both opposition parties--I think that is true, is it not, Mr. Sweeney?

Mr. Sweeney: Yes.

Mr. Laughren: The Liberal caucus has agreed that automatic indexing should take place. It is not at all an outrageous demand for the simple reason that it is always increased anyway. It is not as though it is not increased; it is. The cabinet always grants an increase. We are saying that, instead of that, the principle of it being automatic is terribly important to injured workers. It is not as though we are saying it is going to cost more. We are saying make it automatic. It is going to cost more anyway.

10:40 a.m.



I hope the government members will let that sift through their heads, and when it comes time for the clause-by-clause discussion--they are already shaking their heads over there. Why is that? What is wrong? It is not going to cost anybody any more money.

Mr. Havrot: I am not saying anything.

Mr. Laughren: You are shaking your head.

Mr. Havrot: I can shake my head all I want.

Mr. Laughren: Maybe it will speed up the sifting.

Mr. Havrot: It is an impediment I have.

Mr. Lane: It shakes automatically.

Mr. McNeil: It always shakes the same way.

Mr. Laughren: Anyway, I hope you will consider that seriously.

Mr. Sweeney: Mr. Chairman, I have one short question. During our last set of hearings, there was a considerable amount of debate as to which index to use. One that I thought we were coming closer to accepting for these kinds of things was the average industrial wage increase. May I now assume that you have gone off that?

Mr. Farquhar: No, we have not.

Mr. Sweeney: Could I get your sense then? Have you agreed among yourselves on a specific index or are you open to whatever happens to end up?

Mr. Farquhar: We want an automatic increase built into the act. For some time our position has been that the figure to use is the average industrial wage. The reason is that in a certain way it gives the worker who is on workers' compensation the equivalent status he or she would have if he or she was back in the labour force. When the average industrial wage rises faster than inflation, they would get the benefit of that, which is like a productivity increase. When there are hard times and the average industrial wage rises more slowly, they would share in the problems of other workers. That has been our position up to this time.

Mr. Sweeney: That has not changed.

Mr. Farquhar: No. It is right in the brief on page 13.

Mr. Sweeney: That is all I wanted.

Mr. Chairman: If there are no other questions on that, we can go on to survivors' benefits.



Mr. Farquhar: Just before going off that, we have the letter the board sent to the employers, which is what I was referring to. The board is proposing "that assessment rates should cover...including full allowance for the cost of inflation adjustments to benefit levels in future years." It is proposing to employers that assessment rates be based on that.

I am not sure whether that is now official board policy. Mr. Cain might want to comment on that. If that is the case, then if you as a committee add an automatic inflation adjustment, you will not be raising assessments for employers. Apparently, that decision has already been made. That is important in terms of the political process. Do you want to comment on that?

Mr. Cain: I just caught part of your question. I cannot answer that question. I really do not know.

Mr. Sweeney: I have not seen that.

Mr. Chairman: I do not think anybody--at least I have not seen it.

Mr. Farquhar: It is a public document as far as we know. It was sent to all employers last month.

Mr. Sweeney: Classified as employers.

Mr. Farquhar: Most employers.

Mr. Chairman: When the clerk comes back, we will get a copy. Is that okay?

Mr. Farquhar: It is a pretty important document that I would have thought--

Mr. Lupusella: We are the last ones to receive information, and this committee has a clear mandate to reshape the Workers' Compensation Board.

Mr. Chairman: We will have this copied.

Mr. Lupusella: I think the WCB is reshaping us.

Mr. Chairman: On survivors' benefits--

Interjections.

Mr. Chairman: Order, please. Shall we move on?

Mr. Farquhar: Many members will remember the emotion generated by the Falconbridge mine disaster several weeks ago and the worry that was expressed by some members in the House about what would happen to the survivors of those miners, people who clearly died creating the wealth of this province.

The area of survivors' benefits has been an incredible sore point to survivors, to the labour movement, to injured workers and to many concerned citizens in Ontario for an awfully long time.

One big priority of the Association of Injured Workers' Groups for this set of committee hearings is that you do something to improve what has been offered in Bill 101.

The first point we would like to make is in our brief, starting at page 14. We have tried to describe for you how this new set of survivors' benefits works. A mark of the complexity of it is that it is very hard to describe. We have the interaction of the net income approach with the integration of Canada pension plan survivors' benefits, with different income levels of people, and with a variable lump sum award. It is an incredibly difficult set of proposals that you may find quite hard to analyse.

I would like to take a minute to explain how these survivors' benefits will work. This is the new section 36 of Bill 101.

The key decision that has been made by the Ministry of Labour has been to introduce a dual award system for survivors' benefits. In a way, it is bringing in half of Professor Weiler's proposal. We are going to have a lump sum for the non-economic losses and then a monthly award more or less to give the family some recompense for the financial losses.

The lump sum is set at a basic \$40,000. A spouse age 40 at the time of death of the worker would get a \$40,000-lump sum, except in some situations that I will not go into much detail about. That lump sum will go down with increasing age to a minimum of \$20,000 for a spouse age 60 or more. It will go up with decreasing age to a maximum of \$60,000 for a spouse age 20 or less at the time of death of the worker. We have been given information by the board that there are even spouses under age 20, so it is not a theoretical possibility.

Right there you have a very complicated system, but the basic idea seems to be that a spouse left bereft by the death of the other spouse at a young age has many more years of pain and suffering to go through from the loss of that loved one; an older spouse has many fewer years. We have some questions about that principle, but we will leave them for a minute.

The other component of the survivors' benefits under Bill 101 is a monthly award, and here there is a major improvement over the white paper. The white paper basically denied any monthly award at all to spouses under 40 unless there was hardship, which the board would decide on a case-by-case basis. We objected very strenuously to the principle that, just because a spouse is less than 40, all he or she would get would be a lump sum.

Under the new scheme a spouse age 40 at the time of death of the worker gets a 40 per cent of net income monthly award. That monthly award will be decreased with the decreasing age of the surviving spouse to a minimum of 20 per cent of net income. So a 20-year-old spouse left single by the death of a spouse would get a 20 per cent of net monthly award and a \$60,000 lump sum, and a 60-year-old surviving spouse would get 60 per cent of net income and a \$20,000 lump sum. You see that with increasing age the percentage of net income you get goes up and the amount of lump

sum you get goes down, so it is a sliding scale working in two different dimensions. It is really complicated to figure out how this has an impact.

In addition to this, Bill 101, as it does with pension supplements, integrates Canada pension survivors' benefits into the scheme. The way this is done is to take the average earnings of the worker before death, deduct from them the amount of survivors' benefits that would be awarded and then use the resulting figure as the basis for the net income calculation..

Mr. Laughren: CPP survivors' benefits?

Mr. Farquhar: Yes. CPP survivors' benefits. For those of you who are not aware, CPP survivors' benefits are a relatively small amount of money for a single surviving spouse. There is a maximum of around \$230 a month, and it varies with income; then there is a flat rate for each surviving child of around \$84 a month for 1984. We are not talking about a huge amount paid out by CPP, although it is obviously of greater importance to lower-income surviving families. That is the new scheme and, as I have said, it was very hard for us to evaluate it.

10:50 a.m.

Probably the key improvement that the average member of the public would understand is that instead of paying, as we do now, a flat-rate benefit of around \$600 a month to the surviving spouse and \$165 a month to each surviving child, which puts most families of survivors close to a poverty-level income even if the worker was making very good money before death, instead of that flat-rate benefit system, which was just a terrible oppression for many families, we have a monthly benefit for individuals and families that is based on the pre-death income of the worker. That key change is very important. It is something we have been demanding.

Evaluating the specific formula that was used here was very difficult. We have given you three tables. We have tried as much as we could to give a value to these benefits to people in different circumstances.

I have to admit that when Cara Melbye and I did these calculations, we were shocked to learn that a lot of people would still be getting less than under the present system. That was unexpected. When we first saw it, we thought: "A lump sum--everyone getting a monthly benefit--has to be an improvement for everyone; maybe not a big one for some, but certainly an improvement for everyone."

Mr. Laughren: Can you explain that?

Mr. Farquhar: Look at table I, on page 17. This is very interesting. I have been forced to do something that is sort of misleading; but it cannot be helped. We have tried to reduce all the benefits available in the new act to their so-called capitalized value, which is the amount of present dollars you would have to put into the bank to pay out that monthly benefit and that lump sum over the future, adjusted for cost of living. It



is confusing because the figures may look quite large on paper as a lump sum value, but in fact on a monthly basis they do not work out to much. We had to do it because we were comparing apples and oranges and all kinds of different figures, and the only way to bring them all down to a common value was to capitalize them.

I have said here, "at 2.5 per cent discount rate." Committee members will remember it was Mr. Lane, I think, who had quite a bit of familiarity with 2.5 per cent versus seven per cent. A 2.5 per cent discount rate is the rate you use when you are trying to give a present value to a future series of payments that are adjusted for inflation. In other words, you are giving a full inflation-adjusted value of a given monthly payment, or in this case a monthly payment plus a lump sum.

Table I deals with surviving spouses without children. The existing system gives the surviving spouses \$593 a month for life unless they remarry. The new system gives these surviving spouses a variable lump sum plus a variable monthly benefit based on their age. I calculated the combination of the lump sum, the variable monthly benefit and a capitalized value. I drew a line under all those numbers that would be less under Bill 101 than under the existing act. You will see that almost exactly half the survivors would be worse off under Bill 101 than under the existing system.

You will also note that it is the low-income survivors who are shortchanged the most. The single surviving spouse of a worker earning \$10,000 a year, except for the one aged 60, would be worse off under Bill 101 than under the existing act. Spouses under around age 40 of middle-income workers, those earning \$20,000, would be worse off. For the \$30,000 earners, only the young surviving spouses would be worse off; all the others would be better off.

We do not see how we can bring in a major improvement to the compensation legislation and leave any spouse worse off. We do not see that.

Turning to table II--

Mr. Sweeney: Before you go on, let me ask a question so I can understand how you get these figures. Your 2.5 per cent discount rate takes in inflation, but what rate of inflation? The four per cent we have now or the 12 or 14 per cent we had before?

Mr. Farquhar: Any rate. You assume that whatever rate of inflation you have over an average period of years in the future, the inflation rate will always be an average of two or 2.5 per cent under the interest rate. Whatever the future rate of inflation is, the interest rate will be a bit above it. In some years the gap might be greater or less. Right now there is a huge gap between inflation and interest rates, but in the future the gap might be only one per cent. It all evens out.

Mr. Sweeney: It is an assumption, in other words.

Mr. Farquhar: It is an assumption that is pretty safe.



Interjection: The board uses it.

Mr. Farquhar: The board uses it. Insurance companies use it. Courts use it. It is about as safe as you can get as far as assumptions go. It does not matter much what the future inflation rate is because you take this fund of money, deposit it in interest-building securities and you are constantly going to be gaining on the inflation rate.

Mr. Sweeney: The only reason I raised the question was that some of our people did a comparison as well, although we used actual dollar figures over a 10-year period, a 15-year period, a 20-year period, for example, and in almost every case they are better off. That is why I am really surprised at the kinds of things you are coming up with.

Mr. Farquhar: I have checked these, and I think Garth and I both agree that these calculations are pretty close. I would really appreciate having the board's actuary check these out.

Mr. Gillies: Could I ask just one question and make a point? Does your capitalized value calculation include the lump sum?

Mr. Farquhar: Yes, it does. It is the lump sum plus the monthly benefits all put together.

Mr. Gillies: I guess the only other thing I wanted to mention is that one improvement under Bill 101 is that the benefit continues regardless of remarriage.

Mr. Farquhar: Regardless of remarriage.

Mr. Gillies: You have to remember when you look at column 1 that under the old legislation if surviving spouses remarried they lost everything.

Mr. McCombie: Yes. The cap under column 1 assumes no remarriage for all those figures.

Mr. Gillies: I am not detracting from your argument at all, but I would just point out that probably a large percentage of the surviving spouses, especially the younger ones, would benefit from these figures. I do not know the figure, but I imagine a fair percentage remarry.

Mr. Farquhar: We acknowledge that improvement in the text of the brief also.

Mr. Sweeney: Thank you.

Mr. Farquhar: I do not want to occupy too much time because I am really watching the clock here. The purpose of the tables is to show these figures, at least our rough calculations, because we do not have the resources that the board or others have. We were surprised to find, looking at table II, that with respect to a monthly benefit, and remember the lump sum is excluded from this thing, if you try to look at it in terms of

your constituents, they are going to get a lump sum and then a monthly benefit. All the lower-income spouses are going to get less than a monthly benefit.

Remember they get a lump sum in addition to that, which works out to something on a monthly basis. You will see that as the monthly benefit goes, the existing spouses get their \$7,000 or so a year, but the future spouses, especially the younger ones of low-income workers, are getting very small yearly awards under Bill 101.

Mr. Sweeney: They are getting up to \$60,000 cash, which should be capitalized too.

Mr. Farquhar: Yes. I am trying to compare the values, and you will notice that no spouse is allowed to receive a lump sum.

I had better go to table III, because we could get into half our argument on figures when all we are trying to do is perhaps to have the committee have these figures checked, develop some better figures and have a real basis hopefully for improving these benefits.

Mr. Laughren: Can the board do that?

Mr. Farquhar: The board could do that, I am sure.

Table III deals with surviving spouses with children; these are the people whom we are really thinking about, I think, with respect to improvements in survivor's benefits. I have assumed a female spouse, aged 35, children aged eight and 10 at the time of the worker's death, assuming both children continue their education at age 21 and assuming the board approves that future education, which it has the power to disapprove.

I show the value of the award for the existing act at \$222,360--these are the flat-rate benefits--compared to Bill 101, which would be around \$250,000; so there is around a \$30,000 improvement for the low-income family. If we go down to the \$20,000 income, their benefits are worth around \$300,000, which is an \$80,000 improvement. For the \$30,000 income, we see a really substantial improvement; it is almost double. Their benefit is going to be worth more than \$400,000, compared to \$222,000 under the existing.

Mr. Sweeney: That surely was the whole intention, to take into recognition that those who have been earning more had the right to continue somewhere along that scale of living.

Mr. Farquhar: This shows that under Bill 101, all families, and I have taken a sample family--there may be a family that will get less, but a sample family such as this--will get more, in every income category. It shows Bill 101 is an improvement, but for the low-income family, from my point of view, especially the low-income family, it is not much of an improvement. We think something should be done there at least.

Mr. Sweeney: Compensation is not intended to be an improvement system; it is intended to be at least a matching system to what was already there.

Mr. Farquhar: We think the problem is that you are not matching it. That is the main problem.

Mr. Sweeney: Yet in your examples, in every single case they are better off.

Mr. Farquhar: They are better off under Bill 101 than under the existing act. When I say they do not match it, perhaps I could go back to explain where we think the shortfall comes from. This is the key to the whole thing.

11 a.m.

Mr. Sweeney: Where are you now?

Mr. Farquhar: It starts at the bottom of page 15. We see three reasons why there is a shortfall for some people and not much of an improvement for some others. The first reason is that Bill 101 has cut back the amount of the lump sum. The lump sum is for pain and suffering.

We have a dual award here: a pain and suffering amount and an income-related amount. The higher the lump sum, the more the proportionate benefit for the lowest-income workers. That is one aspect of this. When you cut back the lump sum, it is the lowest-income workers who suffer the most, because obviously a lump sum is much less significant to a high-income worker than to a low-income worker.

We had Professor Weiler proposing a lump sum based on 250 per cent of the average industrial wage, which would have been more than \$50,000 this year. We have the Bill 101 proposal cutting that back to \$40,000. That is one area where there is a problem.

The second area is really important for all committee members to focus in on, because it is a cutback to a significantly disadvantaged group of people.

You will remember I said at the beginning that the white paper was not going to give a monthly award to any spouse under age 40 unless there was hardship, something we really objected to. Those spouses are getting a reasonably small, but nevertheless significant monthly award under Bill 101. It is 40 per cent of net at age 40 reduced one per cent a year back down to 20 per cent of net at age 20. They are all getting something every month, but to a greater extent, that is at the expense of the older spouses.

Under the white paper the older spouses were going to get up to 75 per cent of net; so, for example, a spouse over 50, left alone by the death of his or her spouse, under the white paper is going to get 75 per cent of net. In other words, the theory there was you are old, you are not going to return to the work force, so you get income reasonably close to what your supporting spouse was giving you.



Under Bill 101 the older spouse will get a maximum of 60 per cent of net income, and that is a key reason why some of these benefits to the families, which are good during the years you have your children, suddenly turn a bit sour when the older spouse finally has the last child leave home and the benefits fall back again to a relatively low level.

A third reason we are seeing some strange comparisons here is that integrating Canada pension disability benefits hurts the lowest-income workers most. It has a disproportionate impact. A worker earning more than the maximum may have no negative impact whatsoever from integrating CPP. The worker down in the \$12,000 or \$13,000 area will have a very substantial impact from the WCB award. It varies with income. I do not know whether people realized that. Changing to the net concept is one thing, and adding CPP integration to that is another. Those are the three problems.

Our proposal, if you take a look at it, is twofold. At the top of page 16 we recommend increasing this lump sum at least back to the \$50,000, the 250 per cent of average industrial wage, and hopefully to a lot higher. We are valuing somebody's life apart from the economic loss. From our point of view, a \$40,000 starting figure is pretty niggardly and we should look at an increase.

We do not like the concept of a lump sum. Giving that widow or widower a big lump sum right at time of death might not work out too well for some families. We like the idea of somehow converting that lump sum into a monthly benefit, similar to what we are talking about for the permanently disabled. Quite apart from that, if you want to look at it as a lump sum, we think \$40,000 is too low.

My final point would be, why do we not look at increasing the percentage of net back to the level of the white paper for the older spouses? That is another important consideration for all of you to think of for the older spouse.

Mr. Laughren: Something is searing my soul, Mr. Chairman. When this bill was introduced, was I, like so many others, completely snookered? When I looked at this bill--and I have not read what I said in Hansard because reading your own speeches is a terrible thing to do--I remember speaking on the bill, and I think I was quite generous in my praise for the increase in survivors' benefits.

I read that bill through several times. I did not have that much time before the debate took place and I did not have time to do these kinds of charts and so forth. I thought the saving grace in the bill was the increased benefits for survivors. That was the one thing that made me feel good, that perhaps after all these years of delays and so forth something good was going to come of it. Have you concluded that survivors are better off, generally speaking, under the existing act than this new one?

Mr. Farquhar: No. It is clear enough, especially for survivors with children and where they have their children for a long time at home after the death of the spouse--that is why I put



in table III--at any income level they are better off. That is the big improvement. That is one reason why we really want to see some action taken on letting existing survivors opt into the new scheme where it is to their benefit. That is a key improvement. A lot of single surviving spouses are worse off.

Mr. Laughren: What you are really saying then, and I do not want to put words in your mouth, is that it is the old story: some, in this case survivors, not injured workers, are subsidizing others under the new act.

Mr. Farquhar: To some extent. The best example is that the monthly award to the younger, single surviving spouses is made greater; to the older, it is less. Percentages have been shifted around.

Mr. Laughren: That is mean.

Mr. Farquhar: That is a key change.

Mr. McCombie: Maybe I could add one thing. I think the overall net improvement, looking at survivors as a category, is substantial. The net The studies that were done indicate that.

Mr. Laughren: The plus and minus figures.

Mr. McCombie: Yes. In fact, I believe it was the highest amount of all these proposals. Again I think you still have a little bit of that taking away from one group to give to another, plus more coming from the system itself.

It is complicated, and I do not blame you. We thought that way too when we first read the bill. We thought this was a dramatic improvement, but on closer examination we found there were a few flies in the ointment. While we are not saying that section of the bill should be thrown out, we are saying there are some improvements here; let us take this opportunity to make those improvements across the board.

Mr. Farquhar: Especially we are asking you to think of the surviving spouse without children. That is a pretty common situation in today's population.

Mr. Laughren: I do not think I am speaking out of turn for the committee when I say I do not think the committee ever intended that anybody would be worse off under the new legislation. I think there was a consensus on that in the committee. Even the member for Timiskaming (Mr. Havrot) would not do that.

11:10 a.m.

Mr. Sweeney: I would like to clarify one point in terms of what Floyd just said. I would certainly agree the intention was to start out to give some less than they are getting now, but also I recall fairly clearly a very lengthy discussion and the point was, let us seriously take a look in the survivors' benefits area at those people who have a greater need.

We looked at some of those. We looked at the older woman who was by herself and we said, what is her need? It is not for a large lump sum of money. Her need is for a steady, weekly or monthly income. Therefore, let us set this thing up in such a way that she gets that. What is the need of a young, single woman? Since she has 40 years ahead of her to redefine and restructure her whole life, her greatest need is for a lump sum of money on which she can make her own personal decisions. It is the same thing with a woman with two or three kids. What is her need?

I think we have to keep that factor in mind, and I must say I am favourable towards this particular proposal. Whether all of the figures are the best they could be--

Mr. Laughren: The one that is in the bill?

Mr. Sweeney: The one that is in the bill. In other words, the approach that a younger single woman should get a larger lump sum but has a lesser need for a weekly amount; an older single woman has a need for a smaller lump sum but a larger periodic amount; the middle-aged woman with children has a different kind of need. I think this approach deals with that.

While I am quite prepared to take a look at the individual figures involved in here, I am going to tell you pretty carefully that in my judgement this is one of the best reflections of the discussion we had and the agreement I thought we came to about where the needs were and the way these payments should be structured to meet those needs. You are not going to end up with the best of all worlds for everybody no matter how you set this thing up.

Mr. Dee: I think one of the concerns we would like to emphasize is that, particularly for the low-income earner, a lot more of the emphasis under Bill 101 is on the lump sum payment than on the monthly amount. If the lump sum payment is used wisely, this could be to the benefit of the worker. But in many cases where you have reduced the monthly payment to a low-income earner in order to give him a bigger lump sum at the time of the trauma, we have serious concerns that this lump sum will not be used in the most appropriate manner, especially when it is given to the survivors of an injured worker at a time when they have just undergone a major trauma to their own individual families.

Mr. Sweeney: Excuse me. We had a fair discussion on that whole question as well and, quite frankly, I felt at the time it was very patronizing and I still think it is very patronizing. We had a discussion here a little while ago about whether someone had the right to commute his pension. We keep asking, "Who the hell has the right to make that decision?"

I feel the same way about this situation. I do not think we have the right, quite frankly, to say that these people are not going to be able to. Sure, there is a risk involved, but it is the same thing with a young woman whose husband dies and she gets \$100,000 worth of insurance. Who is going to come along and say, "Sorry, young lady, you do not know how to handle that money?"

Mr. Dee: I agree with you that if a person wants to take that money, if he is adamant that he wants to spend it, you are right; it is his decision and we should not be patronizing. But I think perhaps the presumption in the beginning should be that a monthly amount will be paid. If the person wants to vary that monthly amount so as to take a lump sum, we can give him that choice. But I think perhaps a presumption of a monthly amount that would work out to the same capitalized value as a lump sum may be a better way of dealing with some survivors.

Mr. Sweeney: I do not know. I fundamentally disagree with the principles on which you are basing your objections.

Mr. Farquhar: May I go back to our principles? First of all, in the long term we may have a certain objective, which is a higher level of income security for all survivors. In the short term our key proposal is to increase the amount of that lump sum. This has nothing to do with the principle; we are just increasing the starting amount because it is low--it is cut from even what Professor Weiler proposed--and we are proposing especially, more than anything else, that you think of the older spouse.

As I understand it, the committee came to a consensus that the older spouse should get a reasonably high percentage of net income, and this proposal has cut that percentage from 75 to 60--that is a real cutback--and then transferred some of that money to the younger spouse. Let us look again at the older spouse and see if we can raise that percentage.

I do not think we are questioning the fundamental principle of approaching it on two sliding scales. We are showing where some inequities have resulted and proposing, in my point of view, some pretty reasonable changes that are in line with even the previous government positions along the way.

Mr. McCombie: It is also in line with the principles that you and the committee are in favour of.

Mr. Sweeney: When you make comparisons, my understanding is that a change that has either already taken place or is in the process of taking place with respect to Canada pension, in terms of one spouse or two spouses, the figure of 60 per cent is the one you are shooting for. In other words, a single spouse needs at least 60 per cent of the income that a couple needs.

Mr. Farquhar: That would be an absolute floor.

Mr. Sweeney: As I say, it is a figure that is being used at the federal level.

Mr. Gillies: Mr. Chairman, on this point, since it is the appropriate point, I would like to make a very strong argument on behalf of the ministry that we feel there is a considerable improvement in this system we have adopted. The rationale we used in the ministry is very much along the lines that Mr. Sweeney has just enunciated.

First, in terms of the lump sum, I feel there would be many



surviving spouses who at the time of a bereavement would want to be in a position to make much the sort of judgement that Mr. Lupusella was making on behalf of his constituent earlier. In many cases this would be the time they might want to have at least the option of paying off a mortgage, etc.

If you look at your own tables, as my friend pointed out, almost invariably the people who are helped under this bill are the people who we feel would be in the most need. On your table III, in every case where there are children there is a considerable improvement in their position. The older woman, who statistically and practically is the least likely to be able to enter the work force, again is helped.

While in this legislation we are certainly not out to penalize anyone unduly, the people at the top end of your table I are the people who are most likely, one, to be able to enter the work force and support themselves to a certain extent and, two, not only to be able to do it but also most likely statistically to do it in fact.

The other point is, as I recall, Professor Weiler was going to end all pensions at age 65, and I believe he proposed to end them on remarriage. At the ministry, we have rejected both arguments. The pensions will go for the lifetime of the survivor and they will go on regardless of remarriage. So in any number of areas, this is a considerable improvement.

Mr. Farquhar: We are not challenging the fact that for a great number of people it is an improvement. On the other hand, we are trying to give you some practical suggestions as to improvements in it that would even out some of these inequities.

The final comment is that we still have a couple of remnants of the old act in here that we would like to see dealt with. Subsection 36(7) is the section that allows the board to tell the worker how much his or her funeral should cost.

Mr. Lupusella: Mr. Chairman, I had a supplementary.

Mr. Farquhar: May I just finish this section? Subsection 36(9) is where the board is allowed to tell the workers' survivors whether they are allowed to get further education. We feel those interferences in private decision-making should be ended at this point. We would like to see subsections 36(7) and 36(9) dealt with as we proposed in our brief on page 16.

Mr. Lupusella: My question is for clarification. On page 19, table III, you are talking about the capitalized value of awards. You clearly stated that the existing surviving spouses are not covered by Bill 101, which we all know. Spouses getting \$7,116 per year for life, escalated, would receive \$174,840. Are you talking about spouses receiving \$593 per month? Did you make any calculation on the capitalized value of awards? In hypothetical terms, let us say all surviving spouses will be covered by Bill 101. Did you do any research or study of what the capitalized value of their awards would be under Bill 101?



11:20 a.m.

Mr. Farquhar: I think we could assume that we could project the Wyatt estimate of \$25 million for this year's claims, multiply it by some percentage and come up with the capitalized value. It is probably in the hundreds of millions of dollars more.

Mr. Lupusella: You are talking about the total capitalized value. My concern is that if you take into consideration the ceiling for a survivor's spouse of 10, 15 or 20 years ago, by adopting the formula in Bill 101, how much would the capitalized value of awards be for each survivor's spouse? Have you made any study of that?

Mr. Farquhar: No, we did not do that. I am sorry.

Mr. Lupusella: Are you going to do it?

Mr. Farquhar: We cannot, but maybe the board could.

Mr. Lupusella: I think we need that because it is our intention to make sure that Bill 101 will be retroactive, especially on this issue. There is no doubt in my mind that we are dealing with a clause affecting people who are most in need and where there is no specific dispute that a fatality took place. It is a clear-cut case of people who have been suffering because spouses passed away as a result of industrial accidents. It is our intention to pursue that in the Legislature to make sure this clause of Bill 101 will be retroactive to cover everybody.

I do not know how many people are going to be affected, but I would be interested in finding out, for survivor's spouses of 10, 15 or 20 years ago, how much the capitalized value of awards would be if they are covered under Bill 101. Can we have those figures?

Mr. Chairman: That could be obtained, could it not?

Mr. Cain: The only thing we would have to ask is that you provide us with what you would want us to take as the earnings basis. The reason I ask for that is that with almost all these claims we do not have the deceased's earnings because, obviously, they were not necessary. We were paying a flat amount of pension. When we did the survey for you, and I think it was for 1979 that we did it in the last committee hearing, we found that in many of those cases, even though we phoned the employers to get the earnings, we were not successful. Therefore, we have to be given some blanket type of earnings we ought to use if we cannot get them in some other fashion.

Mr. Lupusella: Perhaps you can use hypothetical cases for the satisfaction of the committee to find out how the capitalized value of awards would translate in Bill 101. I do not think it would be a difficult mission to find the real income of a person who passed away as the result of an industrial accident, because we can get that information through the Canada pension plan, for example. The Canada pension plan contributions would give us some information. I am sure we could get from the federal

government the earnings of persons who passed away as the result of industrial accidents. They would have to fill out forms with social insurance numbers and they would send the persons' incomes for several years.

Mr. Welton: Can I just ask for clarification on that? I take it what you are asking for is how much it would cost to apply the new scheme to existing survivors.

Mr. Lupusella: No.

Mr. Welton: The capitalized value would be the same as it would be for the person in the same income circumstances under the figures that have been calculated.

Mr. Lupusella: No, it is not, because 10 or 15 years ago the ceiling was what it was. You cannot make a comparison with new claims covered under Bill 101, where the ceiling is \$31,500. I think that is the one. If we are talking about survivors' spouses of 10 or 15 years ago, the maximum ceiling was maybe \$9,000 or \$10,000. I am specifically concerned about finding out how that figure would translate in the capitalized value of awards if they are supposed to be covered under Bill 101.

Mr. Welton: Taking their actual income at that time, unadjusted, and the ceiling as it applied?

Mr. Lupusella: Right.

Mr. Cain: We will make certain assumptions but they will be quoted.

Mr. Farquhar: We would like to move to finances next, if possible.

Mr. Riddell: I just wanted to ask about subsection 36(9). I cannot believe a board can make a determination about whether a youngster goes on for an education. Surely the philosophy in this province for years now has been that every young person should be given the opportunity and the right to obtain an education. What is going on here? Is this something new? Is this in the old act?

Mr. McCombie: The old act used to have it that from age 16, they did that.

Mr. Chairman: It has been there for a long time.

Mr. Riddell: What is the reason for this? Why would a board tell somebody the education of the child will have to be terminated?

Mr. Cain: The main reason the section reads the way it does is because of the professional student. I must admit we have taken the point of view that at about age 26, 27 or 28, unless we see the person going towards an objective of some particular career, we may very well at that point say, "We think it has gone far enough." That is the only point.

I do not think anyone has seen us cut some young person off at age 19, 20 or 21. I do not believe you have ever seen us do that. We just do not do it. We agree with you entirely that every young person is entitled to an education. If that is what their parents, when both were alive, wanted them to have, then we are going to try to give it to them ourselves. It is not to be restrictive in that sense whatsoever and to my knowledge we have never done it.

Mr. Cook: Can we take it that you are supporting the idea of altering the legislation in Bill 101 to make it less restrictive?

Mr. Cain: Please do not ask me that. I have no position here other than to explain. That is why I try to stay out of arguments. I just try to explain.

Mr. Farquhar: Canada pension legislation has an age limit of 25. Up to age 25, as long as you are in a recognized educational institution, you automatically get what appears only--

Mr. Chairman: It is quite possible it should be graded. It should be 26 or 27.

Mr. Watson: You do not have to be any age, is that right, as long as it is a bona fide objective?

Mr. Cain: If a person is pursuing an education towards some objective--it could be a general objective because in many cases a person does not know exactly the career he wants to follow--and we are satisfied that is the direction he is going in, then of course we must and should continue paying.

Mr. Watson: But you say it is used only for the professional student; in other words, somebody who just likes to go to school all his life and wants support for it?

Mr. Cain: That is the purpose of it. To my knowledge, it is rarely used.

Mr. Farquhar: Because of time pressure, we are proposing that we leave temporary benefits issues and move directly to Garth Dee dealing with the important subject of finances.

Mr. Chairman: I am sorry, you want to skip the temporary issues for now?

Mr. Farquhar: Skip temporary. We hope we will have time at the end. If we do not, that is it.

Mr. Dee: Traditionally, injured workers have not had that much to say about the finances of the Workers' Compensation Board, but it is becoming very obvious that injured workers have a couple of very major concerns with the way the board runs its own financial department.

First and foremost is the security of future payments to victims of occupational disabilities. Right now the board has a



fairly substantial unfunded liability. As employer assessments are necessarily being increased to try to recover the cost of past accidents, we are getting a very predictable reaction from employers to the hike in those assessments.

The Association of Injured Workers' Groups is quite upset that this is happening now. Rates are being hiked now to pay for accidents in years gone by simply because the board has not properly funded itself in years gone by. If the board had funded for accidents all along as they occurred, we would not be in the situation now of having to hike the assessment rates to such an extent where we have this employer backlash.

11:30 a.m.

In the past, employers have had a free ride--if not free, a very cheap ride--because the compensation board has not passed on the costs. But eventually, those costs have to be paid. We are finding now we have to start paying them. Because of the reaction we are getting from employer, injured workers are very concerned that this unfunded liability, this improper financing of the board, is now going to lead to possible cutbacks. We feel they are unjust cutbacks. The objective should be just compensation in the circumstances for the employee; it should not have that much to do with the finances. Unfortunately, it looks as if it is going to.

The second reason injured workers or workers as a whole have a concern about the way the board finances itself is one that you could relate directly to safety issues. Accidents do not just happen. Accidents are a result of the system set up to produce; they are a result of what we decide to produce. They are very much industry and employer related. An individual employer can affect the methods of safety; he can alter the methods of production; he can better educate his workers.

Basically, employers do not set out to injure workers--nobody would ever suggest that--but in making the decisions, they decide how many accidents are going to take place. When an employer makes that decision, we believe he should face fully what those costs are going to be. In other words, the employer should not be able to externalize the costs of an accident.

If somebody invests his money in mining and decides he is going to produce in such a way that so many accidents can be expected to happen, when that employer makes a marketplace decision, we want the costs associated with those injuries to be reflected on the bottom line of the employer. That would be for society's best good, because any time you allow someone to be subsidized, he is not going to make the correct marketplace decision.

It is very much a reliance on the market. When somebody can get away without paying for something, he is going to use more of it. In this case of industrial accidents, if the employer can get away without paying for the full cost of those industrial accidents, by the very nature of the business decision more accidents are going to take place.



By way of analogy, if you are running a rental business and you rented out equipment, if someone brought that equipment back to you damaged, he would be expected to pay for the damage in order that people would take proper care of that equipment when they had it out of the place of business.

It is the same with an employee. He rents out his time and his labour to the employer. We want to make certain the employer takes proper care not to injure and not to damage that person when he is in the work place.

In light of these concerns, the Association of Injured Workers' Groups wants two things to happen. We want a compensation system that reflects the full costs of an industrial accident; in other words, whatever the injured worker suffers, he should be brought back into a position where the full costs are borne by the employer and not by the employee. The second concern relates to the unfunded liability. In any one year we want the full cost of compensating injured workers to be collected by the Workers' Compensation Board.

We feel that complying with these two objectives would result, first, in greater reduction of the unfunded liability, because the costs of accidents would be billed as they happen, and, second, greater employer awareness of the very safety issues we have to deal with. If we were not faced with a huge unfunded liability, as we are now, those two objectives would be sufficient. Unfortunately, we now have a very large unfunded liability that we have to do something about.

There is some question about how large the unfunded liability is. The Wyatt report that was brought out on April 17, 1984, estimated it to be \$4.9 billion. That is most likely in the range; in other words, we are talking about billions of dollars.

The Association of Injured Workers' Groups has a couple of concerns about the actuarial methods used to calculate the \$4.9 billion. There are two assumptions the Wyatt Co. made, the first with respect to persistency rates on compensation and the second with respect to the real rate of return they can expect to make on their investments.

The persistency rate is a measurement of how long we can expect an injured worker to remain on compensation before returning to employment. In times of high unemployment, it is the injured workers who suffer the worst, as well as the other handicapped and disadvantaged people in the province. There are extremely high rates of unemployment among the injured workers, and with a poor economy we can see the persistency rate and the length of time spent on compensation increasing, simply because they cannot find a job despite their best efforts.

The persistency rates the board is experiencing now are at historically high levels. They have never been this high before. That is because we have never had unemployment of this degree before.

When Wyatt made its assumptions to calculate the \$4.9-billion unfunded liability, it made an assumption of persistency rates staying at the same level as they are now. You will find that a decrease in the persistency rates would have a great effect on the expected unfunded liability and the expected assessment rates to employers. We feel an assumption that the persistency rates will continue at the current levels is at this time unfounded.

The second concern is about the real rate of return on investments. In other words, how much does the interest earned on investments exceed the expected indexing under the act? The Wyatt Co. has assumed a two per cent rate of real return. During recent years any investor should have been able to do better than two per cent in terms of real growth. Again, we are at historically high rates of real growth of money. Interest rates by far exceed the rate of inflation, by much more than two or three per cent. The Wyatt report does nothing to reflect the recent increase in the rate of real growth.

You can very much see the conservative nature of the calculations used by the Wyatt Co. by looking at the fact that where there is an unfavourable trend in terms of persistency rates, the Wyatt Co. has assumed that those persistency rates will continue. Where there is a favourable trend in terms of finance in the compensation award, of interest rates over inflation, the Wyatt Co. has made no effort to take into consideration that this may, in fact, be a lasting trend.

In other words, they have taken the worst trend and continued it; they have taken the best trend and said, "No, we have to look at historical rates." In general, it just reflects the very conservative nature of the Wyatt reports. In addition, the Wyatt Co. also made some very pessimistic assumptions about the rate of real growth in the economy.

The second issue we want to look at is why the unfunded liability exists. Attached is table 1, on page 27. This is a chart of the actual assessment rates, the percentage of payroll the compensation board has charged to employers. If you look, beginning from 1978, amazingly, you will see a reduction in the assessment rates given to employers as a percentage of payroll.

Mr. Laughren: All employers?

Mr. Dee: This is average. If one looks at these rates and sees the decrease, one might believe that the compensation board's finances were in great shape up until 1981, allowing for these decreases between 1978 and 1981, when, in fact, the first Wyatt report in 1978 had indicated that the compensation board was not in this situation.

Looking at the way the compensation board reduced its rates, it is very hard to find a rationalization for that. The very reduction of those rates has increased the unfunded liability to the extent it is now. It also means that to get back to a situation where we are not increasing our unfunded liability, the compensation rate as a percentage of payroll has to be hiked

dramatically in comparison to the 1981 rates. If you were to look at it in comparison to the 1978 rates, the increase would be hardly as dramatic.

11:40 a.m.

The Association of Injured Workers' Groups is quite upset with the way the compensation board has handled its finances. We have a totally unnecessary employer backlash. If this thing had been handled properly, there would have been no disruption to the employers and there would not have been this reaction, this effort to try to cut back on the benefits of injured workers. We believe a lot of this can be traced to the very way the board handled its own finances.

The main error the compensation board has committed is in the valuation of what future payments for accidents would cost. The board has consistently refused to acknowledge the rate of inflation, the fact that we would have cost-of-living adjustments to the Workers' Compensation Act. It has used a discount rate that is closer to seven or eight per cent in assessing the cost of accidents.

We have already talked today about the fact that a two or two and a half per cent discount rate is much more appropriate. The effect of using a seven or eight per cent discount rate is to undervalue the cost of accidents. The undervaluing of the cost of accidents has resulted in the two things I stressed before: first, the unfunded liability grew and, second, employers did not have to face the full costs of the accidents when they incurred them, but now they have to face them later.

Unfortunately, when managements made these decisions about how much safety they were going to have or what the number of accidents was going to be, they did not have full information in front of them. In other words, they were not making the proper decisions then, and we have had too many accidents as a result.

The effect of not fully funding the compensation board has been more accidents and more deaths just as surely as if you had taken a gun out on the street and shot people. Nobody is suggesting employers have done that, but employers are making those decisions and, because we are not forcing them to look at what those costs are, without any malice whatsoever employers simply do not take them into consideration. We want to ensure that those employers do take those costs into consideration.

We are still left with a problem about what should be done about the unfunded liability. First, let us not make it worse. From now on the board must attempt in every year to recover the full costs of compensating the victims of those accidents in the years in which they happen. According to the letter that was distributed to you today, it looks as if from the 1985 assessment year onward the board is finally going to attempt to bring its own finances into that situation. That is a relief. At least the unfunded liability will not grow.



What we are left with, though, is an unfunded liability from past years that the board must do something to recover. The Association of Injured Workers' Groups does not want the unfunded liability to put a continuing damper on a proper discussion of appropriate compensation. When we discuss levels of compensation and the benefits under compensation, we should look at the effects of an accident on a victim; we should not take other factors into consideration. We would like to see the discussion of changes in workers' compensation in future years take place in circumstances where we do not have to be overly concerned about the cost of past accidents. To the association it is very important that the amortization of the unfunded liability take place as quickly as possible.

We are not suggesting that we should cause incredible disruptions to the employers of this province by trying to recover this unfunded liability in one or two years, especially during these times of a poor economy. However, we would urge on this committee and on the board that it attempt to recover the unfunded liability in as quick a manner as possible.

One of the ways of more equitably distributing the burden of recovering these costs of past accidents is to look at the history of past accidents within our economy. There are still many companies with atrocious safety records operating in this province. It seems unjust that these companies should have the other companies of the province subsidize their past accidents. We feel that a company such as Manville Canada Inc., with its horrible record of safety, should be in a position where it could bear an increased share of recovering this unfunded liability.

There are a couple of suggestions that tend to get overlooked when you talk of finances. The two easiest ways of reducing the unfunded liability and of reducing compensation costs in this province are evident to anyone who has studied the matter.

First of all, reduce the number of injuries. That will do the most to lower compensation costs. Cut down on the number of injuries in the first place.

In the second place, an injured worker should have the right to return to the pre-accident employer--in the limited manner, as has been discussed, but there should be some right in this regard. This would cut down on a rates of persistency and would cut down on the amount of compensation that would have to be paid.

These are two worker-related rights that would still go a long way to reducing assessment costs. I do not know if you have any questions about that.

Mr. Chairman: Mr. Lupusella first and then Mr. Sweeney.

Mr. Lupusella: Thank you, Mr. Chairman. I am delighted to see this letter dated June 15, 1984, which has been distributed to the committee members. It is a letter sent by the Workers' Compensation Board to 40 industry groups. Of course, this letter has been signed by John Neal, board actuary. I would not



expect something else, but I am just wondering if there was a covering letter, although this is a letter per se which states the principle of what the message is all about. Was there any covering letter attached to this letter? Are we aware of that, or is this the only letter which was sent to the 40 industry groups?

Mr. Chairman: I certainly do not know the answer as chairman and I do not know whether anybody else has that answer.

Mr. Lupusell: Is there no letter from the chairman of the board or any message, or just a straightforward letter?

Mr. Chairman: I would figure from the letter that the ministry met with these 40 industry groups and as a follow-up there was a commitment to send this letter. I am only assuming that; I do not know.

Mr. Lupusella: Can we get a copy of any covering letters sent to the 40 industry groups?

Mr. Chairman: I guess really what we want is a report of the initiation of this letter, how it came about, did anything else go out, who did it go to.

Mr. Lupusella: I know the message is clear to the industries that the assessment will go up in 1985 with a maximum increase of 15 per cent and so on. I am raising this particular issue in accordance with the principles raised by the last speaker that the best investment for the industry is to reduce the number of accidents. I felt that it would call for the board, including the chairman who is charge of the board, to have attached a letter to this June 15 message to the industries, talking about the cost and stressing that the best investment for the industries is to reduce the number of accidents.

He is in charge of the board. I remember my colleague the member for Nickel Belt (Mr. Laughren), when Mr. Starr was in charge of board, saying: "You do not have any control over the board's operations." It now appears this letter has been mailed out by the board actuary with a clear message about increasing the assessment in 1985 by 15 per cent and so on. We know for a fact that last year it was supposed to be 28 per cent. It has been reduced to 15 per cent because the Minister of Labour intervened to reduce the industry assessment.

I hope in the future the chairman of the board will take a leading role in delivering a message to the industry when the assessment rate is to be increased. He understands there is a reason it has to go up, but at least industry should also get a message that the best way to reduce assessment is to reduce the number of accidents. I think it is appropriate for the chairman to deliver this message to the industries rather than for them to receive this clear message that the assessment has to go up--and it explains why, unfunded liability and so on. I think the way in which the chairman of the board is treating the industries is unfair.

11:50 a.m.

Mr. Chairman: What is your question then?

Mr. Lupusella: I raised the question at the beginning of my comments. My question is to find out whether any covering letter was attached to this letter dated June 15, 1984, or whether it is a straightforward letter like this sent to the industry, which is very unprofessional.

Mr. Cain: I have limited knowledge of this. As the committee has directed, I will obtain whatever information is available. You will recall the committee commented on this in its first report. There were many meetings between the board and industry to discuss assessment rates, as directed by the committee. Many matters were brought up during those meetings. I was not present. I do not know what they were.

Mr. Laughren: On a point of information: In the chart on page 27 with the assessment rates, 1984 is blank.

Mr. Chairman: I have Mr. Sweeney down for a question.

Mr. Laughren: I am sorry.

Mr. Riddell: Before we leave this, I wonder whether it would be helpful to the committee if we were to get the responses from industries, if they are responding to this letter. If we are to consider all views when making a decision as a committee, I would be interested in knowing what kind of response industries have given to the letter that has gone out to them.

Mr. Chairman: In a general way, I suppose, yes.

Mr. Lupusella: Mr. Chairman, I hope your colleagues will not accuse me or the member for Nickel Belt (Mr. Laughren) of not having any concern whatsoever for the wellbeing of industry.

Mr. Chairman: We would not suggest that.

Mr. Gillies: I was not sure what your position was.

Mr. Lupusella: I feel sorry.

Mr. Gillies: I did not know whether or not you wanted the assessment to go up more or whether or not you wanted to pay off the unfunded liability. I was not sure.

Mr. Lupusella: I think you are admitting that you were not following the comments I was making. If this letter was sent as it is without any covering letter, it is a sign of a very unprofessional operation by the chairman of the board.

Mr. Farquhar: I have a comment on the actuaries. When we are blaming the board for this shortfall, we are not blaming the actuaries. They are doing their best to calculate things. We are blaming a political decision at high levels. We have a lot of respect for the professionalism of the board actuaries and in particular for the very reliable statistics they have given to the committee, to us, to business and to everyone, in a neutral and fair-minded way. That should be clearly on the record.

Mr. Lupusella: That is why I am not blaming the actuaries. I am blaming the chairman of the board.

Mr. Gillies: I would just say in defence of the board, and I am not carrying a brief for them, that from the wording of the first paragraph, this is obviously a follow-up to the meetings that were held with ministry staff and the board officials and so on. It seems a little informal, but when following up on a meeting, it often goes out without any particular fanfare.

Mr. Lupusella: Let us get all the covering letters that have been mailed out to industry.

Mr. Sweeney: I am very pleased you included this in your brief. It has been obvious from away back that the money available to pay out from the obvious sources determines the kind of benefits we can end up with. In other words, it is critical that the financial affairs of the board be a matter of in-depth discussion, because if the money is not coming in, one cannot pay out; one cannot keep building up this deficit.

Mr. Dee, I also appreciated your description of the possible unfunded total figure as being out of line, as being unreasonable. Do you have an educated or professional guess from any other source as to what the figure could be? You quoted \$4 million. You seemed to be saying that is probably too high.

Mr. Dee: It is \$4.9 billion.

Mr. Sweeney: It is in billions; excuse me.

Mr. Dee: This came out on April 17. We read through it and looked at some of the assumptions. I suppose it is strictly from a commonsense point of view. You can look at some of those assumptions and say they are conservative. We lack the resources. Being an actuary is a professional field. All we can do is look at their assumptions and question them. We do not know the numbers.

Mr. Sweeney: Based on the factors you have taken into consideration, I would gather that you are assuming the figure certainly is no higher than what they are putting out and is probably lower. Would that be a fair statement?

Mr. Dee: I think that would be fair, yes.

Mr. Sweeney: Okay. There was considerable discussion the last time around about whether under any circumstances, for any reasons, the provincial Treasury should either partially or completely bail out this unfunded liability. Have you come to any conclusions about that, yes or no?

Mr. McCombie: Our position has been and will be that the taxpayers should not bail out the board. What these figures show is that the board, as well as being incompetent in dealing with injured workers, is incompetent as a manager. Why should the taxpayers be asked to bail out the board because of its past financial mismanagement?



Clearly the employers of the province have been undercharged for years, and while people may talk about how theoretically the workers pay and so forth, the principle there is that employers at least put up the front money, and they have obviously not been doing that for years. In the body of the brief we talk about how one of the ways to reduce this is to go back to these periods of underfunding and charge employers what should have been charged at that time.

Mr. Sweeney: The reason I put the question comes back to a point Garth made early in his statement. If I understood you correctly, you are recommending that, from this point on, an industry in which certain accidents occur has to pay the full value of those accidents in the year in which they occur. There is some fancy name for that; I cannot remember what it is.

Mr. McCombie: Fully funding.

Mr. Sweeney: Okay, that is what we are looking at. In other words, if a particular industry has 10 serious accidents and the fully funded value of those is \$500,000, I gather you are saying this industry has to put \$500,000 into the workers' compensation account. Is that what you are saying?

Mr. Dee: That is correct.

Mr. Sweeney: That is something new. You are saying we start that from this point on.

Mr. Dee: It is in the act now not quite as tightly as it should be. I think the British Columbia act, if you are looking for a financing section--I do not think we have a copy with us--is much more explicit about stating what must go into the board accounts in any one year.

Mr. Sweeney: But my understanding is that this is across the entire rating group; it is not for that particular business. That is what I thought you were saying. In other words, if a General Electric plant produces that many accidents and requires that much money to fund them fully, then I understood you to say that General Electric, period, as opposed to that rating group, has to put \$500,000 into the pot.

Mr. Dee: No.

Mr. Sweeney: Am I misunderstanding you?

Mr. Dee: You are speaking of employers in general. We are talking about employer groups, the classes of employers by which the compensation board sets its assessment rates. In other words, any particular category of employer that is used as one grouping to set assessment rates should in one year cover the costs of accidents within that employer grouping.

Mr. Sweeney: Okay, I misunderstood you, then. I thought you were talking about individual rating as opposed to group rating. That was not part of your proposal.



Mr. Dee: No, that is getting back to the experience rating. It still has an awful lot of drawbacks, which we do not want to go at. If the individual employer groupings, the groups of employers on which assessment rates are set, start to get hit with costs within those groups, they will start to come up with their own methods of self-regulating, their own methods of keeping those costs down. We do not believe it is necessary to move to full experience rating.

Mr. Sweeney: How then, Garth, is what you are proposing with respect to that kind of co-funding different from what is currently being required? What is the essential difference?

Mr. Dee: From this letter on, we are in agreement with what it looks as if they are going to do with 1985 assessment rates as far as covering the full costs is concerned. Okay?

What has happened is that in the past they have not been doing that. They have been billing employers by setting their assessment rates lower than the costs of the accidents incurred. In other words, if the accidents in any one group cost \$2.5 million, the board was charging them only \$1.5 million. They are systematically doing that by underestimating the compensation costs related to an accident or a disability.

12 noon

Mr. Sweeney: I am sorry to keep adding on to this, but it is important, at least for me anyway, to understand what you are saying.

The concern you are raising is the way in which the board decides the value of that accident as opposed to the requirement by the board that a rating group has to pay the full amount of that accident.

Mr. Dee: That is correct.

Mr. Sweeney: They have always had to do that. What you are arguing about is that they just have not set a high enough value on it.

Mr. Dee: That is correct, but they have done it in such a deliberate manner that it seems to me they have had to have foreknowledge of the fact that to pay this compensation claim is going to require more money than what they are going to bill those employers. I would agree with you. What they have done in the past is they have underestimated the cost of those accidents.

Mr. Sweeney: The principle of what you are suggesting, though, is not fundamentally different from what they are already required to do. That is what I am trying to get at.

Mr. Dee: No. If you look at--

Mr. Sweeney: I understand that. I wanted to try to understand how your proposal differed from the present requirement.

Mr. Dee: Structurally it is not different. In terms of the amount it is much different.

Mr. Sweeney: I understand that.

Mr. Cook: If you think about the costs of an accident, what the board has tended to do is pretend there is no such thing as inflation. Since there is inflation, what that means is that if someone is injured now and he is going to have a pension that is going to be paid into the future, if you ignore inflation, then obviously you are grossly underestimating how much money is actually going to have to be paid out to that person in the future years. That is what the board basically did and which they are now thankfully starting to--

Mr. Sweeney: That is what they are signalling in this letter.

Mr. Cook: Exactly.

Mr. Sweeney: From now on we are going to include the inflation factor in those figures.

Mr. Cook: That is right. What they argued in the past was the reason that this happens was because the act is unindexed. The actuary said that because the act was unindexed, it did not provide for future cost of living increases, so they could not bill employers on that basis. That is just a snare, or delusion really. They certainly could have, because it was clear that there was inflation and that the Legislature was taking that into account in those amendments.

It is another very good reason why there should be a provision for automatic indexing right in the act, because then it would make it clear that this is a system that does consider inflation.

Mr. Sweeney: I am on my last question, Mr. Chairman.

I gather from your remarks of a few minutes ago that you are still very leery about individual experience rating.

Mr. Dee: Yes, that is correct.

Mr. Sweeney: I know you were the last time and I am sure you have not changed your position on that.

Mr. Dee: No. We have been hitting employers as a class and letting them self-regulate according to what their costs will be--self-regulation as well as government regulation--but if you give that class of companies enough incentive, they will come up with their own method of conducting business. It will not make experience rating a necessity, because there are a lot of adverse effects from experience rating that will mostly affect the injured workers and we do not feel they are desirable.

Mr. Sweeney: That is one I still have some questions about.

Mr. Havrot: Just one question, if I may, on your page 27, table I, payroll-weighted average assessment rates. Is this the average for the whole board or is it any specific industry?

Mr. McCombie: I believe it is all schedule 1 employers.

Mr. Havrot: I have never seen rates this low with any of the employers up in my area. As a matter of fact, I must tell you I just had one chap come in who hauls tree-length logs and he had an assessment of something like 12.5 per cent. He wanted to cover himself, and it was going to cost him \$2,500 to cover himself for \$20,000. Also just recently, I had another one with the hotel business, and I think his assessment was around 3.5 per cent.

I have never seen rates this low. I am just wondering how you arrived at these figures or where they came from.

Mr. Dee: These are board figures

Mr. Havrot: But they are based on the overall average of the whole board, not just a specific--

Mr. Chairman: Of all assessment groups.

Mr. Farquhar: It is payroll-weighted, which means they take X at \$12 and weight it. It is their average, not a general average.

Mr. Havrot: The figures are rather deceiving because I have never seen rates that low.

Mr. McCombie: These are board figures.

Mr. Havrot: I understand what you are saying. It is just that \$1.84, for example, for 1983 is very low. I cited that one instance where it was \$12.50 per \$100.

Mr. Chairman: I am sure (inaudible) assessment bill.

Mr. Havrot: I was just using that as an example. In the forestry industry too it is very high.

Mr. Chairman: There is a high end of the scale. There is no question about it.

Mr. Lupusella: The average figure (inaudible).

Mr. Havrot: Yes, but that is taking everything and throwing it into one big pot and coming up with this.

Mr. Laughren: To follow up on that, the highest rate in Ontario is for mining contractors. I think it is around \$28 per \$100, but that reflects the accident rate, so they do not need to come complaining. Let them reduce their accident rate.

Am I not correct that we could take \$2.17, which is in this letter, and add it to the chart on page 27? That is the same figure, is it not?

Interjection: Yes.

Mr. Laughren: Just for the sake of fun, it would be interesting to put in the next column there, public relations and advertising expenses per \$100 payroll. You do not have that, do you, Mr. Dee?

Mr. Sweeney: Do not get nasty, Floyd.

Mr. Laughren: Thank you, Mr. Chairman. I just wanted to clear that up.

Mr. Chairman: A point of information.

Mr. Dee: Unless there are any other questions, can we bring this to an end?

We just wanted to emphasize primarily that they have screwed up in the past in the way they have handled this. When employers start to complain now, we want the committee to be able to recognize that a lot of what employers are going to have to face now is the cost of their accidents in the past that they never had to face. It is not because of the increased compensation rate.

I will pass the brief on to Nick, who will do administration.

Mr. McCombie: Starting on page 28, we deal with the question of administration and appeals, as outlined in Bill 101.

As an introduction to this, we would like to refer back to Professor Weiler. He seemed to be extremely perplexed that most of the representations we made to him stressed that an awful lot of our problems were with "the administration of workers' compensation in Ontario." He could not figure that out. We feel that was probably because he did not actually meet with many injured workers and looked at it all in a very academic light.

Yet it is true that many of the problems we see as representatives and injured workers see in our daily dealings with the board are a result, not of the statute or the regulations but of board policy. The question of policy, the question of administration, is a critical one to us. Committee members can sit and draft and redraft and amend and put out a perfect law, but it will not matter a damn if it is not administered properly. I think that is a fairly common assumption in many areas of administrative law.

In these introductory remarks, we would like to deal with the question of workers' representatives. There are several sections of the bill that deal with the appointment of or consultation with members representative of workers by the corporate board, appeals tribunal, medical assessors and so forth. It is not clear in the bill how these consultations and/or appointments are going to be carried out.

We met with the minister and the deputy minister a couple of weeks ago and asked them this. They said they did not really know. We asked whether there were any background papers or draft regulations and they said: "No, there are not. This is something the committee will be looking at."



12:10 p.m.

One thing we are concerned about, as an organization that represents injured workers, is we have noted in the draft bill that there are no provisions for consultation with or appointments after consultation with injured workers. Certainly we are not here to suggest that the trade union movement, which presumably is what is being referred to by "workers," is an enemy of ours or is a group we would not like to see included, but we should make the distinction.

We are not lumped in with organized labour; we are not the Ontario Federation of Labour and we are not a trade union. We are a group that represents a constituency of injured workers and, as such, we feel that injured workers, who are the basic consumers of the system, should have some representation. It is all fine and well to have worker representation, but what about injured worker representation?

One way of dealing with this would be to look at the difference between temporary benefits and permanent benefits. You might say that the trade union movement is much more involved in areas where there are temporary disabilities, temporary injuries; they get involved in dealing with those. The worker comes back to the work place and maintains his status in the union, and that is where the input from the trade union movement could come from.

On permanent disabilities or permanent partial disabilities in many, if not most, instances the worker does not return to his job; he thereby loses his membership in the trade union, and the trade union thereby does not have the kind of interest, for very practical reasons, that it might otherwise have in the permanently partially disabled.

We feel it is critical that if there is going to be real representation on these various bodies, it has to include the representation of people with permanent partial disabilities, and this comes from the injured workers' organizations. So we would ask that when you are going through this clause by clause you look at the various sections with a view to amending them to include a representative of injured workers as well as just workers.

The second point under this general topic is subsection 75(4) of the act as set forth in subsection 27(3) of Bill 101. The next several items are perhaps fairly minor, but we thought we would get our licks in while we are here. The proposed subsection 75(4) of the act deals with medical examinations, and it currently reads--

Mr. Sweeney: Where are we?

Mr. McCombie: It is at the top of page 20 of Bill 101. It reads: "(4) If a worker contravenes subsection (3)," which is the request for a medical examination, "or in any way obstructs an examination without reasonable cause or excuse, the worker's right to compensation or to a decision by the board is suspended until the examination has taken place." We would recommend that this be changed to "may be suspended." There certainly are circumstances

where a worker might refuse an examination, and we would like to see that latitude put in the bill.

Subsection 50(1) of the act as set forth in section 13 of the bill is another rather strange thing, and it appears on page 16 of the bill. This concept is in the present act, and it allows the compensation board to divert payments to a spouse or child or children of the worker in certain circumstances. You will note that clause 50(1)(b) as set forth in section 13 says that in cases where the worker's spouse or child or children "is or are entitled to support or maintenance under the order of a court that in the opinion of the board is enforceable in Ontario," the board may divert payments to the spouse or the child or children.

What we are concerned with is clause 50(1)(a) as set forth in that section. Upon reading this through, it looks like a fairly broad and, to our way of thinking, frightening power that the board would have to adjudicate what is essentially family law. We have some serious questions as to how the board adjudicates compensation, let alone how it would adjudicate family law.

This looks to me to be saying that even if a marriage broke down 20 years ago and one spouse is now on welfare in a different area of the province, the compensation board can say: "You have a wife in Sault Ste. Marie who is on welfare. We want to save the government welfare money, so we are going to divert your compensation payments to the wife living on welfare in Sault Ste. Marie."

Mr. Sweeney: It does say "may."

Mr. McCombie: It does say "may," yes, but we really do not see the need for that; we do not see the need for the compensation board to get involved in adjudicating family law. Certainly, we would agree with clause (b) where there is a court order, where there is a support of maintenance order. That makes sense, but we do not see that it is necessary to give them that power.

Mr. Laughren: It makes me nervous, too. The position makes you nervous on this one, because it would be possible, would it not, to have a worker getting a 100 per cent benefit while his or her spouse is living totally on his or her own on a very mean level of subsistence? It might not have to do with a court order. The court might not be involved at all.

Mr. McCombie: It is a sensitive area. We can appreciate the problems in family law, the problems of support payments, people not making support payments and the difficulties of trying to get court orders enforced and so forth. We are sympathetic to that kind of problem. But this kind of broad, sweeping power given to the board would be one where, quite frankly, we do not feel the Workers' Compensation Act is a forum to deal with that. Surely that is a matter for other statutes, for the Family Law Reform Act or for other vehicles, to deal with rather than the Workers' Compensation Board. The kind of wording that is in here could give fairly broad powers to the board to divert payments with no explanation given.

Mr. Sweeney has pointed out that it does say "may."

Mr. Sweeney: Excuse me. I have not read the Family Law Reform Act recently, but is there anything in there which would require something like this? Is this perhaps simply a cross-indexing or something that has to happen anyway? I cannot remember; I am just curious. Nobody knows?

Mr. Farquhar: Prior to this you could have an enforceable order for support, but you could not garnishee the worker's compensation cheque without some permission from the board. This obliges the board to pay that spouse under that order under clause (b). The part we are now objecting to is clause (b) there.

Mr. Sweeney: The only reason I raised it is that I remember when we were debating the Family Law Reform Act one of the women's groups pointed out there were several ways in which their spouses could get money that they could not get at. They felt that was wrong and that had to be opened up. I cannot remember what we actually did in the Family Law Reform Act to do that.

Mr. Farquhar: Would that be pension money and stuff like that?

Mr. Sweeney: There were about four or five different ones. I do not recall whether compensation money was one of them or not. This particular group was bringing to our attention that there were ways in which their separated spouses were getting around supporting them because they were protected under certain umbrellas. I do not know the answer; that is why I raised it. I thought maybe one of you may have done some cross-checking.

Mr. Laughren: Could I give you an example that gives me cause for concern? It is a worker who is on a 100 per cent disability pension and has returned to work. He is a paraplegic. The firm took him back and he is on a full 100 per cent pension. He also has a good job. I am not saying for a moment he is overcompensated because who wants to be a paraplegic, but here is a person who is now separated from his spouse. It seems to me there is an obligation there. He has two kids and one of them is in a wheelchair as well.

That is what makes me nervous about this. There is no court order involved, but I think that worker has an obligation to provide support there.

Mr. Dee: You are absolutely correct. Of course, the worker would have an obligation. However, the family court is the proper place to decide what that obligation is. Once you get an obligation from the family court, the compensation board should enforce it.

The compensation board should not decide on what the size or the frequency of those payments should be. It is something that I have had experience at doing and it is something the family court is experienced at doing. It is a question of an appropriate forum



for the determination of what those rights are.

Mr. Sweeney: But, Garth, I would interpret the word "may" in here to give the board the right, or permission in fact, to do what you just described. Again, I do not know the answer, but is it possible that without a clause like this in here the board may not have the right to make such a payment and, therefore, it wants to cover itself to be sure if it is so ordered?

12:20 p.m.

Mr. Dee: Without clause 50(1)(b) I do not think they would have that right. We are in favour of clause 50(1)(b). We are not in favour of clause 50(1)(a). Clause 50(1)(a) looks as if you are leaving it up to the board to determine the size, amount and everything else. Clause 50(1)(b) allows them to enforce a court order, and we are fully in favour of that.

Mr. Sweeney: I am very leery about it. Personally, I cannot imagine the board getting involved in clause 50(1)(a) unless there was some good reason to do so. They have enough to do themselves. They are not going to fiddle around with that kind of thing if they do not have to.

Mr. McCombie: I do not think there are any easy answers to it, but as I have said, we would just reiterate that we do not see the Workers' Compensation Act as a forum for resolving the inequities in family law.

Mr. Sweeney: Let us say it is taken under consideration, but I will not agree to support it.

Mr. McCombie: Mr. Chairman, are we bound to adjourn at 12:30? We now have nine minutes left. Is it possible to get a brief extension, perhaps to one o'clock? We have a lot still to go through, and we will tailor our presentation to that.

Mr. Chairman: It is up to the committee. Our normal sitting time is 12:30. It is entirely up to the committee.

Mr. Laughren: What do we have on this afternoon?

Mr. Chairman: We have one lawyer coming in, Jacques Laurin, representing three different groups. We are committed to that for two o'clock.

Mr. Laughren: I have a problem over the noon hour, but I can speak only for myself.

Mr. Lane: I am tied up at 12:30 p.m.

Mr. Havrot: Let us spend another 10 minutes.

Mr. Sweeney: We will not ask any more questions. You go ahead.

Mr. McCombie: I will try to be brief. We hope the brief will speak for itself so I will just hit the highlights.



Switching to page 29, number 5, the Human Rights Code, I would like to say one thing very quickly on this. Bill 101 proposes to amend the Human Rights Code. We really do not understand why you cannot put something in the Workers' Compensation Act. Every other piece of labour legislation that I am aware of has a no-reprisals clause. Why on earth can we not have one in the Workers' Compensation Act? There seems to be some mental block or problem in doing that. We do not really understand why.

We spent a long time yesterday talking about the right to return, obligations and so forth. Having something in there with teeth would go a long way towards helping that along. We recommend, as an example, wording similar to section 24 of the Occupational Health and Safety Act.

With regard to the benefit of doubt policy, we note that the royal commission on asbestos has just reported. Some people have a lot of problems with it in other areas, but we recommend, on page 767, recommendation 13.10, that the Workers' Compensation Act should be amended so as to extend to claimants benefit of doubt in a manner "consistent with that found in the Pension Act of the Parliament of Canada."

We have read over the wording of the benefit of doubt in the Pension Act. To us it is certainly far superior to that found in Bill 101. We strongly urge that the committee consider the royal commission's recommendation on that count.

Finally, on government appointees, we talked earlier about worker representatives on the various boards and tribunals. We would just like to say--unfortunately Mr. Gillies has left, but for the record--we realize this is not something the committee will necessarily have any control over, but when the new structure is put in place there are going to be several members appointed by cabinet, for example, chairman and vice-chairman of administration, chairman of the appeals tribunal and so forth.

We want to make it very clear that if this is going to be a new board and we are going to clean the slate and start afresh, we should do it properly. Let us not have the old hacks put back in there. Let us not get all the old corporate board guys who are now without jobs and put them on the appeals tribunal because they are out of work. Let us get some people who are going to do the job properly.

Finally, there was some discussion among ourselves as to the intention with the chairman and vice-chairman of administration, whether they would be the same people who are now at the compensation board. We suggest to the committee and, more particularly, to the Minister of Labour that if you are going to put in a new corporate board--

[Interruption]

Mr. McCombie: That must be Mr. Alexander.

Mr. Chairman: That is our 10-minute warning.

Mr. McCombie: If you are going to put in a new corporate board, let us start with some totally new faces and new ideas, and let us get it done properly.

Mr. Chairman: This is by way of suggestion, of course.

Mr. McCombie: This is by way of suggestion.

Mr. Laughren: It used to be known as housekeeping legislation.

Mr. McCombie: We will certainly respond if we are asked for our recommendations.

On the corporate board itself there are a few suggestions. First, we have run into this old bugaboo, which is dealt with first in the appeals tribunal thing. The chairman of the appeals tribunal sits on the corporate board. We noticed a small movement from the earlier position where now the chairman sits on the corporate board but does not have a vote. We have eased the person that far along, let us ease the person right out of the corporate board.

Subsection 24(1) of the bill is rather strange to us because it appears, and we may be misreading this, to give a virtual veto power to the chairman and/or vice-chairman of administration within the corporate board. To us it does not make a lot of sense if you are saying "We are opening up the corporate board and allowing for outside representation, and everybody will sit down and figure out policy," and then saying the chairman can veto, essentially, any changes in policy that are suggested.

Mr. Laughren: Where is that?

Mr. McCombie: Subsection 24(1) of the bill.

Again, we may be misreading this and if that is the case, fine. It says, "A majority of the members of the board of directors for the time being," and so on. "A decision of a majority of the board of directors of whom the vote of the chairman or vice-chairman of administration must be one." Our reading of that suggests that in order to have a majority vote, one of those majority votes has to come from the chairman or vice-chairman. In other words, if the chairman or vice-chairman votes against it, then it is not a majority vote, even if all the other corporate board members vote in favour. If one of those two does not vote in favour, then it does not pass.

Mr. Laughren: I have trouble reading it that way. I would have thought it meant that as long as the vice-chairman or chairman had a vote, it did not matter which way it went.

Mr. Chairman: I agree. I think you are right.

Mr. McCombie: There is a first part that says, "A majority of the members of the board of directors for the time being, one of whom must be the chairman or vice-chairman of administration, constitutes a quorum." You have to make sure the chairman or vice-chairman is there.

Mr. Chairman: They have to be at the meeting. Right.

Mr. McCombie: Okay, but the second time around, it again mentions "one of whom must be the chairman or vice-chairman" in specific reference to a majority vote. I believe the term "of whom the vote of the chairman or vice-chairman of administration must be one" modifies the term "decision of the majority."

If the committee reads it the way Mr. Laughren reads it, then perhaps a few minor wording changes could clarify that for us.

Mr. Chairman: I can see your point.

Mr. Laughren: How can we get an opinion on that? Can we get an opinion from the legal counsel?

Mr. Chairman: Can we do that, on the wording? We will have that looked at.

Mr. McCombie: One of the things in the white paper which is absent from the bill is subsection 43(g) of the white paper which unfortunately I do not have in front of me. It essentially gives the corporate board the power to hold public hearings. We notice this is absent from the bill and certainly it was our understanding it was Professor Weiler's recommendation and the recommendation of the white paper that the corporate board be more in touch with its constituency.

Subsection 43(g) of the white paper reads, "The corporate board shall have the power to call and hold public meetings and hearings to discuss and review the policies and programs of the board." Again, if we are going to have a fresh look forward and one that is involved and seeking input from outside its narrow confines, then let us give them the explicit direction to hold public hearings.

12:30 p.m.

Finally, we are a little concerned with the part-time status of the outside directors. Given the fact that we will have this new board, presumably many these outside directors, given the fact that the board has been so secretive in the past, will have to spend a lot of time just figuring out what is going on there. We do not really see it meeting once a month and having the kind of impact I am sure Professor Weiler and the committee had expected or hoped it would have. We would recommend as a minimum, speaking for workers and injured workers, that there should be at least one full-time board member representative of that group so this person would be there all the time and would not come only once a month and rubber-stamp whatever the executive directors at the board were suggesting.

I would like to turn to page 34, concerning medical matters, while we are on this. I notice the term "medical assessor" is not in the bill. It is the term used by the minister, and I suppose it is as good a term as any. Certainly, it does seem to us to be a significant improvement over the rather cumbersome medical review panel proposed in the white paper by Professor Weiler. In our



brief we make some suggestions about some possible amendments to the section that deals with medical assessors.

Concerning access to files, we are very happy with the inclusion of sections in the act that limit the right of employers and give workers a limited veto right over what kind of information is available.

Finally, concerning what is referred to in the act as the industrial disease standards panel, which we will call the occupational disease panel, for what I hope are obvious reasons, we have made some recommendations in here about giving it a little bit more clout and suggesting that it should have a little more say in responding immediately to a perceived problem and getting a particular disease immediately included in one of the schedules, and also in getting the board to respond publicly when the board denies one of its recommendations.

I am running overtime, so I will leave it at that and ask Garth and Cara to comment on the appeals tribunal and representation.

Mr. Dee: We do not have much time to go into the appeals tribunal, but I think I have to emphasize strongly that the appeals tribunal as proposed simply is inadequate; in fact, some of the proposals are really appalling.

The appeals tribunal has to be the final level for policy decisions or whatever. You need a separation of the people who make the rules from the people who adjudicate the rules. The appeals tribunal is supposed to be the final level of adjudication. If it is a responsible board, we should trust it to make those types of critical decisions.

Section 86n allows the corporate board to yank back the decision of the appeals tribunal and decide it. This is wrong for two reasons. First, it takes away from the independence of the appeals tribunal. It is not going to be anything more than the corporate board allows it to be; independence from the corporate board is just not going to be there.

The second thing is that even if you were to allow the corporate board to review the decision of the appeals tribunal at its own beckoning, the corporate board under section 86n is not required to hold a hearing. In other words, the most crucial decision of a person's life could be decided in that person's favour by the appeals tribunal. The corporate board could call that decision back up without hearing any submissions at all from that injured worker or from the employer who is interested, decide against the injured worker and cut him off benefits.

If you were to do that in an ordinary tribunal and take it to the courts, the courts would find a lack of natural justice; they would find this procedure contrary to the rules of natural justice. In fact, to protect the corporate board from that type of finding, subsection 86n(2) says, "notwithstanding any rule of law."

It is amazing that when you are putting in an appeals



tribunal, which you want to hold out to be the most independent, the fairest and the final arbitrator, you have to allow the corporate board to be able to override it, and not only override it but override it in such a way that it is contrary to the rules of natural justice as defined by our courts. The central theme yesterday from all the injured workers was, "Give us justice." Now it is proposed to exempt this appeals procedure from the rules of natural justice.

The second comment is that we are adamantly opposed to the chairman of the appeals tribunal being even an ex officio member of the board. It has yet to be demonstrated what is to be gained by that. It takes away an independence; it brings a whole bunch of other considerations into what should be a clear adjudication on the issues.

The system as proposed, by way of analogy, is similar to having the Chief Justice of the Supreme Court of Canada sit as an ex officio member of cabinet and also allowing cabinet to overrule the decisions of the Supreme Court of Canada. I think people would be appalled if our judicial system operated that way. I think injured workers will be appalled if their adjudication issues are dealt with in this manner.

We have to get the chairman of the appeals tribunal off the corporate board totally and we have to modify and eliminate, we hope, the power of the corporate board to overturn appeals tribunal decisions. If we do allow them that power, we have to ensure an open hearing.

Mr. Laughren: Could I ask a brief question on that? Are you saying the appeals tribunal is the absolute end in the process, and if a person feels aggrieved by that decision, that is too bad?

Mr. Dee: That is right. As it is now, a person does not have the right to take that tribunal decision up to the corporate board. The corporate board does it on its own motion.

Mr. Cook: For what it is worth, the person would still have the right to go to the Ombudsman.

Mr. Laughren: Let me tell you what is bothering me. It is an industrial disease decision, whereby the appeals tribunal might go by precedent and reject the appeal because it feels it cannot set board policy by the appeal system, in which case that would be it. If you had it so that either side could request or demand a decision by the corporate board, or at least a hearing by the corporate board, then you would have the board decision being made at the proper level for policy development. That is what is bothering me. I know it can go both ways.

Mr. McCombie: First of all, that assumes the tribunal is bound by policy. The inclusion in the bill of section 86m continues current sections 76, 80 and 81. Section 80 of the current act says the board, in making its decisions, is bound by the merits of the case and shall not be bound by precedents.

We would assume and we would hope--and again this is very vague in the draft legislation because it says the appeals tribunal shall make its own rules and procedures--that the appeals tribunal would not feel itself bound by board policy and that it would consider each case on its individual merits alone. Therefore, in the kind of case you are referring to, they would have the power to say: "This is clearly an occupational disease and clearly should be compensated. The policy is wrong and therefore we are going to allow the claim."

The buck has to stop somewhere. Whether it stops at the corporate board or the appeals tribunal, for us it depends subjectively on who is sitting on those bodies. You could have a good corporate board and a bad appeals tribunal, or vice versa. However, you have to make a decision where the buck stops.

Mr. Sweeney: But your recommendation is, from what we can see now in terms of the structuring, it would be better to stop at the appeals level.

Mr. Dee: That is right, so you do not get the administrative concerns that really should not have much to do with the adjudication of the claim on its merits.

Mr. Riddell: You are assuming again that the appeals tribunal is always going to make the correct judgement. I agree with Floyd. I think they rule against the appeal. Whether this ever happens or not, if the corporate board happens to see the injustice in that decision, then maybe it could correct that injustice. It cuts both ways.

Mr. Cook: The corporate board would still have the power to set the board's policies. If there was some injustice, say, on an industrial disease case, and the appeals tribunal denied the claim, this is why you especially want to have the corporate board holding public hearings on policy issues. They could hold a public hearing and there could be a debate about the policy of accepting this particular industrial disease, for example.

What we want is the appeals tribunal to be able to see the injustice of the board's policy and to allow that injured worker the settlement he would be entitled to, while putting pressure on the board to change the policy.

Mr. Chairman: I want to break in here and say we have reached our 10-minute overtime.

Mr. Cook: One very quick point on the representation question. It is a vital question. We will be submitting further written information to you as a committee. We understand there are negotiations going on now with the Attorney General's department. He is talking to various people about the pressure of representation of injured workers. On the basis of that, we will be submitting further written information to you.

Mr. Chairman: Thank you very much for bringing your very interesting brief before us.

The committee recessed at 12:42 p.m.



0A20N

XC13

-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, JULY 18, 1984

Afternoon sitting





STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister  
of Labour (Brantford PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Witnesses:

Laurin, J., Solicitor, Canadian Lake Carriers Association,  
Standard Compensation Act Liability Association Ltd., Dominion  
Marine Association; with McMaster Meighen (Montreal)

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, July 18, 1984

The committee resumed at 2:13 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: I recognize a quorum. All the members seem to have a cup of coffee. I would like to welcome Mr. Jacques A. Laurin, who represents three groups. If I can find my agenda, I will tell you who they are. Perhaps we could let Mr. Laurin tell us who they are.

JACQUES A. LAURIN

Mr. Laurin: Mr. Chairman, members of the committee, I would like to thank you for giving the three associations I am representing the opportunity to be present before you and to express the views of the associations on Bill 101, amending the Workers' Compensation Act.

I would like to deal with our submission in the following order: first, describing the associations; second, dealing with the principles that are put forth by the bill; and third, addressing the various clauses in the bill which, in our view, could present problems.

To describe the associations I represent, there are three--the Canadian Lake Carriers Association, the Dominion Marine Association and the Standard Compensation Act Liability Association Ltd. The first two are associations of ship owners and the last is an insurer of the same ship owners. Essentially their interests are common and similar.

The Canadian Lake Carriers Association usually represents ship owners with respect to collective bargaining and anything having to do with health and safety on ships. The Dominion Marine Association, which has a similar membership, represents the same ship owners but with respect to anything having to do with the Canada Shipping Act and prevention of injury and accident. The Standard Compensation Act Liability Association insures those people for their workers' compensation liability.

I am trying to summarize my brief. I do not intend to read it as some of what is contained in it you have already heard at prior committee hearings when the white paper was under study.

In essence, the Dominion Marine Association and the Canadian Lake Carriers Association members do not contribute to the workers' compensation fund. They are covered by what is called

schedule 2 of the act, meaning that they pay for accidents as they occur. Through their insurers they will compensate the workers for the amount determined by the board and they will pay all the expenses and costs that are set by the board.

On page 2 of the brief we describe generally the nature of the trade. I think the important element to remember here is that we are dealing essentially with a seasonal trade. Ships navigate in the Great Lakes for part of the year only, not for the whole year. I think this will have some bearing, for example, on the determination of the compensable wages. I think the power is given to the board to try to determine as accurately as possible the actual wages of workmen. This can cause a problem with respect to seamen who normally work eight months of the year. If eight months' wages are averaged over a 12-month period, this can cause problems.

As well as being seasonal, members of the trade have to deal with various jurisdictions. At the same time they can be exposed to liability for compensation in Quebec and in the maritime provinces. This explains to a certain extent why they fall within schedule 2. They do not contribute to the fund, because they cannot really determine the exact portion of work done by the seamen in Ontario only.

Another important element as far as the trade is concerned is that it is a federal undertaking, which means matters having to do with labour relations, conditions of work, health and safety, and more so with the recent amendment to the Canada Labour Code, Bill C-34, anything having to do with health and safety, are determined by the federal government. The trade is essentially covered by federal legislation and it is only exceptionally governed by an Ontario statute for workers' compensation. The same applies in other provinces as well.

SCALA is essentially the insurer or the mutual association that covers those members or companies when their workers' compensation risks are in Ontario, Quebec or wherever an accident occurs. It could be in the United States or it could be abroad, should the ship be called to go to Europe or some foreign port. The experience of the members of the association is such that they deal with many of the compensation boards and are also involved with the statutes of many jurisdictions. They are familiar with what occurs in other jurisdictions.

In essence, the associations are in agreement with the objects or the aims sought by the bill and with the principles outlined on pages 3 and 4 of the bill. Although they are in agreement, I think there is one important element that I also pointed out when I appeared before the Quebec legislature on behalf of the associations and also on behalf of the Conseil du Patronat du Québec, the management group. The same problem was highlighted with respect to Bill 42 of the Quebec government, which has had first reading and will no doubt receive second or third reading in the fall.

That element is, when you are going away from a fixed compensation system and adopting an income replacement system, an

important point to remember is that workers' compensation should provide an incentive to return to work. I think, without taxing workers with taking advantage of the system, one has to recognize human nature and realize that when someone is put in a position of receiving income without working as opposed to receiving income by working, the choice is not difficult to make.

2:20 p.m.

Item 1 in the principles on page 3 says it is agreed that the income replacement system is a proper one, as long as the incentive exists to go back to work and not stay home and receive the same amount of income as one would earn by being on the job.

The second important principle is something which unfortunately is not found in the bill, although it is something I have experienced as counsel appearing before the appeal board in Ontario, as well as in Quebec and in other jurisdictions. Even though you may wish to improve the way in which plans are dealt with and to provide for a new appeals tribunal, the essential element is to avoid appeals and make sure that the rights of the worker are adequately protected. We try to preclude legal arguments and delays and drawn-out debates on the right to compensation. The important thing is to ensure that at the initial stage, when the decision is first made on a claim, that decision is one which is based on as much information as is possible without delaying unduly the payment of a valid claim of a worker.

One fault we found with the system, and unfortunately the bill does not address it, is that quite often decisions are initially made by adjudicating officers without having sufficient or adequate information. That means that to obtain redress or obtain correction to that initial decision, the employer or the worker is often required to ask for a review or take the matter to appeal, which brings about delays, costs and expenses.

In essence at the first stage, when the adjudicating officer makes a decision that there should be an exchange of information from both sides, if the adjudicating officer obtains information from the employer he should pass on that information to the worker so the worker would have an opportunity of responding. The reverse is also true. At least initially, we would be getting a decision which would be as objective as possible and avoid further delays, appeals and applications for review.

Point 3 deals with the principles dealing essentially with the character of these industries. The bill mentions that an important element is prevention and rehabilitation. This poses a problem for these federal undertakings because as such, everything having to do with employment, their collective agreements, conditions of work, also health and safety, is all regulated and governed by federal legislation, either under the Canada Shipping Act or Canada Labour Code under their regulations.

If I may, leaving aside the general principles, simply deal with the reforms or changes which are sought, we have used essentially the recommendations of the white paper, which are found also in the explanatory note of the bill. Regarding the



ceiling for calculation of covered earnings, the associations are in agreement with the increase which is sought.

Our only comment is that even though the white paper recommended 250 per cent of the average industrial wage in Ontario, to more or less keep in step with what is occurring in other provinces--and I am speaking essentially for Quebec and British Columbia--although the \$31,500 reflects about 150 per cent of the average industrial wage in Ontario at the moment, it should be restricted to that amount, otherwise the cost and expense generated by the maximum would be significant and also create a further incentive to be on workers' compensation rather than return to work.

Second, with respect to the change in percentage of compensable earnings from the 75 per cent of gross earnings to 90 per cent of pre-injury net disposable earnings, we agree with that change. The only caution that we have is the minimum. In our view, the minimum could be, for workers who earn less than the minimum, an incentive to remain on or to go on workers' compensation to supplement inadequate wages.

We submit that the workers' compensation system for workers earning less than the minimum should not become an income supplement system. In our view, unfortunately we anticipate that in some cases--we cannot say it will occur in all cases--there will be an incentive to have a workers' compensation injury to obtain the minimum compensation.

The most important point deals with the award system for permanent disability. Here we see a drastic departure from what the white paper indicated. This is at pages 5 and 6 of our submission. Unless I have not understood the bill, there appear to be two standards, one for temporary partial or total disability and another standard for partial permanent disability.

In essence, if I have understood sections 40, 42 and 45 of the changes in the amendments, it could mean that a worker, in the event of temporary total or partial disability, would receive compensation based on his loss of income capacity for the duration of the disability.

With respect to permanent partial or total disability, another system is put forth. There is no time limit and it is open-ended for the life of the worker. Rather than being based on an income capacity loss, section 45 says it is really to be based on the actual physical impairment of the worker, meaning with respect to permanent disability, as section 45 says, "the nature and degree of the injury."

It could mean you may have a worker who, if we take an example, is a pianist who works in a band and is covered by workers' compensation. He loses a hand. With his disability based on the rating tables that would apply--and there has been the same thing in Quebec with its tables having to do with disability ratings--he would be awarded perhaps a five or 10 per cent disability for the rest of his life, when he may be in a position where he may not be able to work at all in his job. If he is a

pianist and he loses his hand, he cannot work and he cannot earn income in his position. By that provision, that worker would be totally prejudiced.

You may have the other situation where someone may have a significant disability rating and be perfectly capable of doing his job. He may receive benefits equal to 75 per cent of his earnings when he can earn 100 per cent of his normal earnings. I think section 45 is probably the most objectionable feature of the bill as it exists. The permanent disability compensation of the worker will not be related to his lost income capacity. It will really be based on his actual handicap, which will be a purely arbitrary measure of the actual disability he suffers with respect to his earning capacity.

2:30 p.m.

Furthermore, contrary to what had been proposed in the white paper, and which was also seen in Quebec's Bill 42 on workers' compensation, there is no time limit. A worker may be perfectly capable of returning to his job and earning full income, and will receive compensation for a partial permanent disability and, at the same time, receive the same wages he had before.

Again on this question, I think if there is a problem, it should really be limited to the time during which the incapacity lasts, because after three or four years he may be capable of earning the same income he would have earned had it not been for the injury. Some compensation systems have even favoured an absolute time limit of three years, cutting off compensation after a period of three years. I think the white paper initially put forth a system such as that one.

With respect to assessment of actual compensation or disability, I think everyone who has dealt with workers' compensation cases is familiar with the fact that there is an upsurge of workers' compensation claims just before a layoff, a strike or labour relations problems. As to determination whether the worker is capable of returning to his job or his normal work, or fails to accept available employment, I think those provisions will be difficult to apply. The job in question may no longer be available. In those circumstances, what criteria or guidelines will be applied by the board to determine whether there is suitable employment for that worker?

The associations welcome the changes with respect to stacking of benefits. They should be reduced by deducting CPP and survivor benefits in cases of permanent disability. However, we would suggest, as is the case with companies that are members of these associations, that to the extent an employer pays for benefits, those benefits as well, where they cover the worker for wages or loss of earnings, be deductible from the actual workers' compensation benefits. There are plans that are negotiated through collective agreements where the employer pays all of the premiums and the worker is entitled to those benefits; they should also be deductible from workers' compensation benefits.

As to fatal accident cases and awards made to spouses, we agree with the lump sum amounts being paid; however, we suggest the amount of the lump sum be similar to the maximum insurable earnings of \$31,500 and not the \$40,000 which is mentioned in the bill. At page 7 we use an example, coming from the white paper, showing that based on that system there would be little or no incentive for a spouse or a widow to seek employment.

I am not trying to be the person who will try to say there is a lot of abuse in the system. I am just trying to be realistic and point out to you situations I have seen, having represented employers before review boards or appeal boards of workers' compensation commissions, in which if a widow is receiving compensation there is little incentive, as long as she receives compensation, for her either to find other employment or to find means to supplement her income.

The incentive is certainly to receive workers' compensation for as long as it can be obtained. I have had three or four of those situations and I do not believe they are isolated cases. Human nature being what it is, in spite of academic or theoretical considerations, when one has a choice of obtaining compensation or benefits without working there is very little choice to be made.

We also welcome the change with respect to the independent tripartite appeals tribunal and simply suggest when that tribunal is established there be a representative of schedule 2 employers, the interprovincial employers or other employers mentioned in the schedule.

On page 8, in paragraph 8, we say the right of an employer under sections 21 and 22 of the present act should be retained, where an employer has the right and where the sanction is that the worker loses his right to compensation if he does not comply, but where the employer has the right to compel a worker to submit to a medical examination. The bill takes that away from the employer.

If the employer is to be in a position to make a proper assessment of the claim, in addition to the information supplied by the board, and more so in the present situation where the board would provide only information it deems relevant, we submit that the employer be given the right to compel a worker to submit to a medical examination. How will the employer be able to comment on medical reports coming from the board without having the opportunity of asking his employee or worker to submit to an examination by a doctor of his choice?

We suggest that by taking away sections 21 and 22 of the act you are putting the employer in a position where he cannot at all make a proper assessment of the claim and leaving everything in the hands of the board, not that we have no faith or do not believe the board can do a proper assessment, but a check or a safeguard is certainly something which permits the board perhaps to take a more objective view of the situation and not automatically award compensation.



There is more thought and a more critical approach when it is known that the employer can compel a worker to submit to an examination and also provide a report to the board saying that perhaps the examination from the doctor of the board failed to reveal certain important elements as to the physical condition of the worker.

With regard to the corporate board, we agree with that suggestion. We say, however, there should be on the corporate board a representative of schedule 2 employers.

We agree also with the creation of a worker adviser office and also an employer adviser office. Again, with respect to schedule 2 employers, we suggest that for the office of the employer adviser there should be a representative from schedule 2 employers.

As to access to claim records or files of the board, there are two standards, one for the employee and a less favourable one for the employer. The employee has an automatic right to the entire file. An employer can obtain only information from the file which the board deems relevant, leaving the board the sole arbiter as to what is relevant and what is not. In all such cases, the employee must be informed before the documentation or material is given to the employer and the employee can object. There is no similar provision for the employer. There are two standards.

As to the thinking that in all cases the employers are really taking advantage of the system and depriving workers from actual compensation, if we are to have a fair and equitable system and not one which is really one-sided, then equal rights should be given to the employer and the worker.

To give you an example, and I remember giving this example before the committee previously, Canada Steamship Lines, a member of the two associations, had a worker who injured his knee and suffered torn ligaments. He received compensation. That is mentioned on page 10. The board suggested subsequently, about a year after, that he have an operation to his knee. He went into the rehabilitation centre for the operation. After the operation, unfortunately, he slipped and injured his shoulder.

2:40 p.m.

The employer, who was paying the compensation himself out of his own pocket, was wondering why his assessments were going up. The board was not giving any information. It was only after repeated requests that they found out that the board attributed the slip in the rehab centre to the original injury of the knee. If the changes go through, saying that the board will only give information which it deems relevant, I am sure that information of that nature would not be supplied to the employer. The board would try to protect itself and avoid saying it had ordered compensation for something that was not really related to the original injury.

There may be a connection with the injury to the knee and the injury to the shoulder, but I would say it is remote; it is not a direct connection with the knee injury. If you say that, as



such, if the worker slipped at the rehabilitation centre it may have been attributable to the knee, what would occur if he had slipped at home while watching television and injured his shoulder? Would the board in all such cases consider it part and parcel of the worker's compensation for the first accident?

Without attacking the objectivity or impartiality of the board, we say there needs to be some check or something that permits the employer to have access to all the records and information on file. Otherwise, there could be a tendency to secrete information that may be damaging or detrimental to the board.

Concerning the obligation of a worker to accept suitable work, we agree with the principle, but what we point out on page 11 of our brief is the difficulty in application. What will be the guidelines for the board to say a job is suitable or unsuitable? We see nothing wrong with the principle; we question the application. Will the board become an employment agency? Will it in every case say, "Job X is suitable; job Y is not"? What will be the guidelines?

One adjudicating officer may say one job is suitable and another will say completely the opposite. There would also be a natural tendency in all such cases to favour the worker. If there is anything that is unsatisfactory to the worker in the new job, the board would have a tendency to do so. I talk from experience, having seen such situations elsewhere.

Concerning the actual cost of the system, we do not have updated figures for the changes that have been made between the white paper and Bill 101, but I think the arguments we raise here and those we raised previously are still applicable in that we find it difficult to understand how the increase in cost could be rather insignificant. If you consider the new system of compensation based on wage loss plus lump sums plus the minimums and all the administrative aspects--the new appeals tribunal, the obligation given to the board to determine what is suitable employment and what is not and often looking to see whether there is suitable employment--all of this will generate costs and expenses. We think the estimate given is very conservative and that in all likelihood the expense and costs will be far more than anticipated.

Concerning the proposed amendments, I do not intend to read what I have said on pages 13 to 20 of the brief. In essence, we deal with the various clauses and suggest alternative wording. I would just like to look at each clause where the associations have comments and mention what could be, in the view of the associations, potential problems in the application of the amendments.

I am going to deal with the actual bill now. First of all, on page 2 of the bill is the definition of "industrial disease." This was also put forth by the International Labour Organization and the same has been said with respect to Bill 42 of the Quebec government on workers' compensation. That definition of industrial disease has to be clear and show a direct connection between the

disease, the actual work in which the worker was employed and the symptoms.

It cannot simply be a question of saying the worker suffers from a disease and it is one which is likely to occur from his work. I suggest there has to be an indication in the definition of the direct connection between the work, the symptoms and the disease. Essentially, the International Labour Organization has retained an actual classification of diseases and the symptoms particular to the actual disease which are characteristic of the work.

As to the amendment to subclause 1(1)(n)(iii) of the act, where we deal with the medical condition of a worker who is to be removed temporarily or permanently from exposure to a substance, here we can see constitutional conflict or problems. This is really something that has to do with occupational health and safety. All this is found in part IV of the Canada Labour Code, where there could be difficulties in application with respect to federal undertakings.

The only comment we would like to make on subsection (7) is about the definition of "spouse." It is simply a question of the drafting of the last subparagraph, where it says with respect to a spouse who has a child "in a relationship of some permanence, where there is a child born." In our view, to determine what is permanent and nonpermanent will create difficulties in application. There has to be an objective guideline or criteria, a time period of some sort indicated there.

We know it may cause problems, but I think there are greater problems by simply having this wording saying "some permanence." An adjudicating officer may say that two persons living together for a month or two months is a relationship that has some permanence because they may have the intention of living together for ever after. I think that wording will lead to a lot of ambiguity and contention.

Subsection 3(1) mentions the presumption that the accident "arose out of the employment." This poses a problem with respect to the marine transportation industry. That terminology can also cause problems with respect to lumber camps or areas where workers are compelled to stay at the work place.

On a ship, this could cause difficulties in that a seaman may be off duty in the galley, eating, and not be at work at all. He may be in his bunk resting. With that terminology, it would mean that any time he is on that ship, even though not on duty and not performing any work, he would be compensable. If he falls out of his bunk, it would be deemed in all such cases as something arising out of and in the course of employment. We have suggested some changes in our brief that would say in the event he is on duty that there should be compensation.

There have been cases--such as someone at a lumber camp who has gone fishing--where compensation has been allowed because they have said the worker was at the work site, the work site being the actual area in which he worked, and he was awarded compensation.

Although the intent is to compensate someone for loss of earnings resulting from work, the wording is so wide it could encompass workers who remain at the work place even when not on duty and give them a right to compensation in any case, which arises out of the time when they are actually on duty or performing work.

2:50 p.m.

Mr. Gillies: Just for the information of the committee, I might point out that section is unchanged from the existing act.

Mr. Laurin: That is right.

Mr. Gillies: You are quite right. The practice has been that if someone is injured on ship, regardless whether he is performing work or not, it is compensable.

Mr. Laurin: We give in our submission or in our brief an example of a seaman--and I must say that fortunately the decision was overturned by a review board--

Mr. Gillies: Mr. Cain was just telling me he made that decision.

Mr. Laurin: It was a case again, unfortunately--this is mentioned at page 14 of our brief--where a seaman got off a ship at the Welland Canal and said to the captain he would rejoin the ship the next day.

He goes off the ship, goes to his family, and although we do not say this here, I think he had celebrated to some extent. He came back and apparently slipped between the ship and the Welland Canal, and they found his body the next morning. The adjudicating officer said that all of this resulted from his job or his work. Even though he slipped on National Harbour Board property, he was not on the ship in any way, and the master did not even know he was there.

We say that the qualification section, which is the same in the act at the moment, saying "arising out of" and "in the course of employment," poses problems with respect to work on a ship or work in an area where the workers remain on the job site.

Mr. Cain: I just wanted to make sure I clarified that. You are quite right that with a person on National Harbour Board property going towards a ship, the compensation board would normally allow the claim. There were very special circumstances in this particular claim to which you refer that caused it to be rejected, not just the fact he was on National Harbour Board property. There were other things.

Mr. Laughren: It was rejected?

Mr. Cain: It was denied. Dependence was denied, but there were special circumstances that caused that.

Mr. Laughren: You turned it down?



Mr. Cain: There were very special circumstances. It is a specific claim, and I do not like to get into that.

Mr. Laurin: I may say that initially the claim was allowed, and on review the decision was reversed and the claim was disallowed, but there were extenuating circumstances in this case.

Mr. Gillies: I have a hunch enough has been said.

Mr. Laurin: This simply points to the fact that the master of the ship did not even know the worker was coming on board at that time. His body was found the next day, and initially the claim was awarded. Had it not been for the extenuating circumstances, the claim would have been allowed.

As to subsection 3(3), we have difficulty in understanding the logic. On one hand, it is said that if an accident arises out of employment it is presumed that it arose in the course of employment, and conversely. I think this is to a certain extent circular logic. It either arose out of employment or arose in the course of employment. It cannot be one or the other. To say if it did not occur in one way it occurred in the other way is circuitous.

As to subsection 3(4)--I am sorry if I may be going through this in some detail; I intend to go much faster when we get to other sections--with respect to serious and wilful misconduct of the worker, this is similar to the present wording. The only problem there is that today with the emphasis on prevention, occupational health and safety and with the change and the desire to increase benefits, to provide for lump sums to the widows in the event of death, there should be thought given to possibly erasing "gross and wilful misconduct of a worker" even in the case of death or serious disability.

If the employer takes measures, takes disciplinary action against the worker to try to force him to follow safety rules, and in spite of all this the worker refuses to abide by those rules, why could the employer not raise that on a claim for compensation? He can raise it only in cases where death or serious disability does not occur.

We have had instances of this nature. We had one recent case, for example, in which a seaman was smoking in a hold where there was gas or combustible material. That is gross negligence. Simply because it is a serious disability, we cannot use that as an argument to say the compensation should be reduced.

Mr. Laughren: I assume, though, in order that the scales are balanced here, which you have stressed in other parts of your brief, if there is wilful misconduct on the part of the employer, the aggrieved party would then be able to sue beyond the limits of the compensation board.

Mr. Laurin: In essence, there is an automatic right to compensation. The employer cannot in any way get away from it.



Mr. Laughren: You are saying, though, that it should not be automatic.

Mr. Laurin: I am simply saying that in cases of wilful and gross misconduct--

Mr. Laughren: So am I; that is all I am saying as well.

Mr. Laurin:--it should be removed, that the approach should be that compensation to the worker can now be opposed in the event of death or serious disability. That is where the expensive claims arise, in those circumstances.

Mr. Laughren: I am not quarreling with your right to make that point. I simply asking whether or not you would also go along with putting that same kind of proviso in there for workers.

Mr. Laurin: As long as it is fully extended and that in all cases any contributory negligence of a co-worker, or the worker himself, can be alleged to reduce compensation or deny compensation, we would go along with that--give a right to take action before the courts.

Mr. Laughren: In the case of the employer?

Mr. Laurin: Yes.

There is one brief comment on page 6. Immunity from suit or legal action or recourse is extended to an officer of a corporation, based on a recent appeal court decision in Ontario, I believe. We suggest that perhaps the word "director" should be added with "officer." There could be situations where a director might be liable. If the intent is really to extend that to officers, there should also be mention of directors.

That is on page 6, subsections 8(11) and 8(12)--no, it is subsections 5(1) and 5(2) of the bill. Where "executive officer" is mentioned, "director" should be added.

On page 7, as we mentioned earlier, in section 8 of the bill where sections 21 and 22 of the act are repealed--these are the provisions giving an employer the right to require or compel a worker to submit to a medical examination by a physician of his choice--we suggest those sections be retained.

On section 36 of the act, as set out in section 9 of the bill with respect to compensation payable to surviving spouses in the event of death, we suggest there should be some time limit as to the payment of compensation, the only time limit at the moment being until the youngest child reaches the age of 19. There should be some greater incentive for the spouse to seek employment if she is in a position to do so. I am not saying she should be forced to work when she has responsibilities to the children, but where she has the option of working and normally would wish to work, she should not be encouraged to refuse work simply because she can get compensation.

We have dealt with the new section 40 before. On page 10 it says that the worker is entitled, in the event of temporary total disability, to 90 per cent of his net average earnings so long as the temporary total disability continues. I would suggest that at the end of that paragraph you add the words "on his job or alternate employment." Even though it is implicit in subsection (2), it should be said there that the compensation continues as long as he is disabled and is prevented from going back to the job he had at the time of the injury or to an alternate job or employment.

As to what is mentioned at the top of page 11, suitable employment, I mentioned earlier the difficulty in determining or qualifying what would be suitable or unsuitable. There is need for a guideline or some qualification of those terms.

On page 13, subsection 43(7), I have one general comment. In our view, in the event that a worker who receives compensation, based on wages he had at the time of injury, feels the compensation he is receiving is inadequate and that perhaps there should be an increase, perhaps subsection (7) could be an incentive for the worker to contend that he has an aggravation to his original injury and then seek an increase.

In all cases of aggravation, based on that subsection, the compensation will be determined for the entire injury. Even the one that had occurred before the aggravation will be based on the earnings he had at the time of the aggravation. There could be, through this subsection, an incentive for someone to have an aggravation to increase the compensation or level of compensation he had. What we suggest in our brief here is that the aggravation be considered as being a new accident and be compensated on the basis of the earnings he had at the time of the aggravation and that the prior injury be compensated as it had been before.

I have dealt with section 45 before. We think there is a contradiction in terms of concepts of compensation between temporary and permanent disability, whereas it should be the same principle--compensation based on loss of earnings capacity rather than an arbitrary table determining compensation simply based on the actual physical handicap.

I would like to go to page 19. What is proposed in removing the right of an employer to compel a worker to submit to an examination is that the new section 75 of the act will give the power to the board to do the same thing. We suggest sections 21 and 22 be retained and, if so, accordingly there should be some--

Mr. Sweeney: I am sorry, I am missing what you are after in 19. What sections are you dealing with?

Mr. Laurin: Section 75 at the bottom, where it says, "Section 75 of the said act is amended by adding thereto the following subsection...." It adds to subsection 73(3).

Mr. Sweeney: The (l) and the (m) parts?

Mr. Laurin: No, just below that. "A worker who has made a claim for compensation." It goes on to say "shall submit to medical examination by a medical practitioner named by the board."

Mr. Sweeney: Yes.

Mr. Laurin: The present system is that the board can do so, but the employer also has a right to do so. The employer should retain the right also. To avoid that the worker is submitted to various medical examinations, there should be some co-ordination between what is mentioned here and what would be retained in sections 21 and 22, giving the right of an employer to request that a worker submit to an examination.

As to section 77, again on page 20, on the point we raised before about the dual standard on access to the board files, I understand Professor Weiler in his report indicated that the reason for giving the employer access only to material the board considered relevant was to protect the worker and avoid sensitive information as to the medical condition of the worker being revealed to the employer. I think the protection sought here goes much beyond the risks or the situations where this may occur.

We propose in our submission that the protection could be given to the worker by obliging the employer to keep such sensitive information confidential. I think that an open and fair system giving the worker and the employer the right to the entire file should exist. It should not be one where the employer is given partial information and the worker can object to any information being given. There is not the same right for the employer.

A problem we also see in the right of a worker to object to information being given to the employer under subsection 77(6) of the act is that this system will bring about delays. The employer says that he wants access to certain documents. The employee has to be informed and he can refuse. If he refuses the matter can be appealed. That will cause considerable delay and a claim may be held in abeyance or there might be a long period before a final decision can be reached on a claim. I think the application of these provisions can cause problems as far as delays and reaching final decisions on claims as quickly as possible are concerned.

I am coming to the end of my comments. On page 26 of the bill, section 86n of the act refers to the power of the board "to stay the enforcement or execution of the order of the appeals tribunal, review and determine the issue of interpretation of the policy...." We find difficulty in what is proposed. If we are to have an impartial, objective appeals tribunal, I think having this section could cause workers, as well as employers, to think that the appeals tribunal will be a mere reflection or rubber stamp of whatever the board decides, rather than being an impartial administrative board or body.

What we have proposed in Quebec has been accepted in the reprint of Bill 42. There is an external appeals tribunal, having nothing to do with the Workers' Health and Safety Commission, completely impartial and objective and not to be influenced by



policy decisions. It is to be on the real merits of the case and the law as it stands. Not only must justice be done but it must appear to have been done. We say that section 86n will give the impression to the public and to workers and employers that matters are decided on policy, rather than on a legal statutory basis, without the matter becoming overly legalistic.

As to the right to appeal, subsection 86o(3) of the act at the top of page 27 of the bill on the right-hand side says, "Leave to appeal a decision to which subsection 2 applies shall not be granted unless..." substantial new evidence exists or "there appears...to be good reason to doubt the correctness of the decision," which will mean that in most cases there will not be an appeal.

I think there should be a right to appeal on application, and not simply where new evidence exists or there is a good reason. What will be the criteria developed by the board to decide whether it is a good reason to appeal? The board will be the judge and a party at the same time in saying that there is no good reason for an appeal to be launched.

3:10 p.m.

As to page 29, section 34 of the bill, having to do with subsection 122(9) of the act, with respect to industrial disease and the presumption that it should be very clear, the International Labour Organization description of industrial diseases, their symptoms and the nature of the work that can cause those diseases should be adopted. It should be clearly indicated in the legislation that there has to be a causal relationship between the actual work, the disease and the symptoms.

One point not mentioned in our brief and not dealt with in any way in the bill is the difficulty that has been encountered by schedule 2 employers in the apportionment of liability for compensation with prior employers. We have had situations where a claim has been made by a worker who was injured on a ship, for example. It mainly occurs in the event of industrial disease such as industrial deafness. If a worker works on a ship in the employment of a company for a period of three months and says he suffers from deafness, the practice is that the last employer is normally obliged to compensate that worker.

With respect to schedule 1 employers, it is easier to do; the claim is apportioned amongst all prior employers because in most cases the deafness would not have occurred simply with the last employer. However, with respect to schedule 2 employers, the board has often stated that this provision permitting apportionment cannot apply between a schedule 2 employer and a schedule 1 employer.

We suggest--and that will be changed in the Quebec legislation--it should be clearly said at section 122 that the board will apportion with prior employers, even though they are schedule 1 employers, in the event that a claim is made with a schedule 2 employer. This is not in our submission and is not in



any way mentioned in the bill. We simply say there should be apportionment in all cases, whether it is a schedule 1 or schedule 2 employer.

Subsection 125(3), at page 30, deals with the power of the board to create a special fund for a schedule 2 employer, I imagine in the event of a disaster or a major catastrophe. We have no objection to the principle there. We simply say that it is a question of what the cost is likely to be and that there should be some form of consultation or co-ordination between schedule 2 employers and the board on this issue.

In essence, those are our observations. I am sorry if I have been somewhat technical and detailed in my analysis. If members or anyone else wishes, I am prepared to answer questions.

Mr. Chairman: Thank you very much, Mr. Laurin. It was a good brief. It certainly got into a lot of detail we probably would not otherwise have dealt with.

Mr. Laughren: I have never had to deal with schedule 2 employers, so I am a little naïve in this whole area. Does the employer just deal with the board as though he were a schedule 1 employer? Let us say there is an appeal, for example. What would happen?

Mr. Laurin: Everything in the act applies to the employer, the only difference being that the employer is not assessed on a yearly basis and has to contribute to the fund. The reason is that normally the assessment is based on the earnings of a worker in the province. The same applies to railway companies and the airlines. It is very hard to determine that a seaman will spend 20 per cent of his time in Ontario, 30 per cent in Quebec and 50 per cent elsewhere.

In essence, what occurs is that the board says, "Mr. So-and-So is entitled to the following compensation," and asks the employer to pay. The employer is normally insured, and the board has the power to compel the employer to be insured, and then pays that amount to the board. In most cases, the board will say what the capitalized value of that pension is. For someone having a back injury, where compensation is 10 per cent, the board will say, "Turn over to us \$50,000 or \$60,000," which is the capitalized value of that pension for the rest of the life of that worker. That is how it works.

Mr. Laughren: Say it works the other way around and compensation benefits are denied. Does the worker--

Mr. Laurin: The same appeal process

Mr. Laughren: Same thing.

Mr. Laurin: The only distinction is the contribution to the workers' compensation fund.

Mr. Laughren: I have a couple of other questions. One is on your opposition to the permanent partial disability pension on

page 5. That one bothered me. I understand the role you are playing on behalf of your employers, the associations, but do you really think it is appropriate, for example, if a worker has a severe hearing disability or loses a hand that he should not get continuing permanent partial disability, even though he might be back on the job earning the same income? Do you see no justice in having some compensation going on for that person?

Mr. Laurin: It is a little difficult. In the bill there is provision for the worker who sustains any form of physical injury to receive a lump sum payment. It is restricted simply to facial injury or whatever.

Mr. Laughren: That is gross disfigurement, though. I am talking about--

Mr. Laurin: Disfigurement. As such, I agree that should be compensated. Perhaps there should be two modes of compensation. As you do have for temporary disability, the compensation should be related to the income loss of the worker. There should also be some form of compensation for an injury he sustains to his hand. Even though he may lose a hand, he may not sustain any income loss.

Mr. Laughren: Exactly.

Mr. Laurin: He is quite capable of doing his normal job. I agree there should be some lump sum payment to him for whatever injury he sustains, even though it may not affect his income.

Mr. Laughren: That is my point. You would prefer to see a lump sum payment rather than a permanent partial disability pension.

Mr. Laurin: No. I think there should be two. If he sustains no income loss, there should not be any income replacement payable to him, but there should be a lump sum payable.

Mr. Sweeney: The point Floyd is making is that there are two distinct kinds of payments, a pension for the injury itself regardless of wage loss, and a second supplement that makes up for wage loss. Are we talking about something different?

Mr. Laurin: No. That may have been the intent in drafting this, but section 45 says that for a permanent disability, regardless of wage loss, in all cases, based on this table mentioned in subsection 3, the worker will get compensation according to the degree of injury. That is what he will be getting whether or not he has income loss. I am saying he should be compensated for income loss, plus a lump sum for the injury caused by the loss of his hand.

Mr. Laughren: But right now the act simply pays the partial disability pension, or recommends that. Right?

Mr. Laurin: Yes.

Mr. Laughren: I do not want to misinterpret what you are saying, so please correct me if I am wrong. I did not have a sense

that you wanted a lump sum payment, but that you thought the permanent partial disability pension would only exist if there was wage loss. If there was no wage loss, you would have no compensation for that worker.

Mr. Laurin: I did not address that last issue you mentioned. In our view, there should be compensation of some sort if there is no wage loss and there is a loss of a limb or some injury caused to the individual.

Mr. Laughren: When you talk about permanent partial disability on page 5, you say:

"It provides that compensation shall continue during the lifetime of the worker. Such a provision enables a worker who has been able to readapt to another equally well-paying job after an injury to none the less receive periodic compensation from the board. This is wrong as it allows such a worker to actually benefit from his injury and receive 'compensation' when, in fact, he does not need any."

I read into that you believe, if there is a permanent partial disability pension but no wage loss, then the permanent partial disability pension should not exist because there is no wage loss involved.

3:20 p.m.

Mr. Laurin: If you extend what I am saying, it leads to that, although my comment was really that the same system as exists in the event of temporary disability should also apply to permanent disability, that it should really be related to the wage loss. But I agree that this leads to some inequity in that someone may have no wage loss, may have suffered an injury and there should be some form of compensation for that.

Mr. Laughren: On the question of commutation you mention on page 6, "Once the...injured worker has stabilized such that his...disability can be accurately determined, he should be given a lump-sum payment without any further compensation." Moreover, the payment of a lump sum would be an incentive to return to work.

I suspect most workers would agree with you; they, too, would prefer to have the lump-sum payment. Where we have always run into trouble is that, while the board will not quite use these words, it is more expensive for the board to commute. The board feels that the worker is entitled to his partial disability pension but is not entitled to a lump-sum settlement. I do not think I am putting words in the mouth of the board that I should not be.

Mr. Laurin: Mr. Laughren, our schedule 2 employers are in a different position in that the board would normally ask us to pay, to wit, a lump-sum amount representing that compensation. We are saying we would much prefer to give it to the worker and forget about the whole thing for the future.

Mr. Laughren: They are ripping you off.

Mr. Laurin: No, we are not saying that.

Mr. Laughren: I am saying it.

Mr. Laurin: We are just afraid of the future. We would rather pay \$20,000 now than pay \$40,000 over 20 or 30 years.

Mr. Laughren: Right. But you see what the board is doing to you, do you not? It is taking that lump sum, investing it at a certain percentage and the payout to the worker is less than the board is getting back on the investment. That is true.

I do not blame you; I am on your side 100 per cent and you are on mine. That may make you more uncomfortable than it makes me, but you are absolutely right. The board is ripping you off, and I think you should go back and tell your employers what the board is doing to you.

Mr. Cain: On the other hand, how much would the board have to assess every employer in the province if every pension were commuted tomorrow morning?

Mr. Laughren: I do not know that.

Mr. Cain: It would be a heck of a lot, so it works both ways. They are paying afterwards for a lot of money that we are paying out today.

Mr. Laughren: So you agree that it does save the board money.

Mr. Cain: I agree with you that there is a problem there.

Mr. Laughren: It sounds to me as if you are. I see your point.

Mr. Laurin: On that issue, in essence what the bill proposes is that the board be given the discretion of paying a lump-sum amount. However, that discretion is limited to a 10 per cent disability.

Mr. Laughren: It is not limited.

Mr. Laurin: It says, "where it does not exceed 10 per cent." That is what the bill says.

Interjection: It is almost automatic that he gets less than 10 per cent.

Mr. Laughren: But they can do it anyhow.

Mr. Laurin: No, I do not think so. I think it is limited, really, to 10 per cent, unless I--

Mr. Chairman: By changing the number, by changing the 10 to something else.

Mr. Laughren: Mr. Cain will help us here.



Mr. Cain: Just to go to the current act, the bill does say that we can commute a pension of 10 per cent or less.

The other section--I believe it is the rehab section--gives us the right to commute under certain circumstances, but it is that kind of right to commute, so it is not quite the same situation you are discussing at the moment.

Mr. Laughren: But there should not be any difference. Mr. Laurin makes the point quite well that the same rules apply to schedule 2 employers as to schedule 1 and that everything is the same; the worker detects no difference. Yet here he is making the case that the schedule 2 employer should be able to take that sum of money and give it to the worker.

Mr. Laurin: That is what we are saying.

Mr. Laughren: Yes, upon the commutation, and I have no quarrel with that. You probably do that in almost every case, and I would assume the worker then would have the right to support the commutation that the employer wants to give him. So the same rules should apply to schedule 1 employers (inaudible); that is my point, and I agree with that.

Mr. Chairman: You agree with that, do you?

Mr. Laughren: Oh, it is amazing the bedfellows you find in this game.

The other thing is the whole question of incentives to widows. That one bothered me. What section was that where you talked about widows not having an incentive to go back to work if they have an ongoing pension?

Mr. Laurin: Or widows in the case of seamen.

Mr. Laughren: What did I say?

Mr. Laurin: You said widow. It might be plural in the case of seamen.

Mr. Laughren: Oh, one in every port. Being a politician, I am not used to people with that kind of lifestyle, not in my party anyway. What was bothering me, I cannot remember what it is in your section.

Let me give you an example of why it bothers me. I had a policeman friend who was killed on the job. To that point he had a family and his wife was not employed. She was very active in the community, raised a family and was a very active person. Because her husband was killed on the job, she got compensation. Suddenly, she no longer can carry on the same lifestyle she had before. Under your proposals she would not be able to continue to raise her children and do a lot of volunteer work in the community, which I think is valuable work, as is raising the children, being active in community associations and all those kinds of things.

What we are really saying is that you do not agree with that. She must go to work.

Mr. Laurin: Not necessarily. I am saying that where she can return to work, she should be encouraged to do so. For example, the worker must accept work which is suitable to him. Maybe the same should apply to widows. I have two situations at the moment, not here fortunately but in Quebec, one where a seaman on a ship died at sea. He had a girlfriend who claimed to be a spouse and was living with him off and on. She was awarded compensation. The employer had to turn over \$200,000 to that board. She will never remarry or go and live with anyone else. She knows she is living the life of Reilly.

Another situation is the case of a worker before the Quebec board at the moment. Her husband died five years ago. She has two children and she has been living with a man for three years, has had a child with that other man she is living with. Every time they sense that someone is watching them, the man goes away and the board continues paying compensation to her. Were it not for the definitions of what constitutes some element of permanence, she probably would lose compensation. There is no incentive on her part to find a job or remarry. She is getting full compensation by taking advantage of the two systems. Furthermore, that man is on welfare and is saying that he is living by himself.

Mr. Laughren: You are sidestepping my example where the person did not work previously.

Mr. Laurin: No. I am saying there are two situations which the bill should address. It could be one situation of abuse on one side, and there is a situation where someone should not be compelled to go back to work when the person can contribute to society. I am saying there should be some element of reconsolidation and balance to avoid the abuse and at the same time not compel someone who can--

Mr. Laughren: There are elements of morality in the judgements being made in your cases too.

Mr. Laurin: We have detectives who see this man; he is there regularly. There is also the cost to the employer trying to track that down.

Mr. Laughren: I do not understand your concern about industrial diseases. Is there reason for you to believe that people who are getting compensation for them should not? I did not understand that in your brief.

3:30 p.m.

Mr. Laurin: An example is deafness. Granted, there are occupations where deafness will occur because of the high noise level. As the definition reads, it would mean that from the time anyone is exposed to any noise, any occupation where noise occurs, that person would qualify as being a victim of an industrial disease. With the difficulty of evidence about where the disease

occurred, as to where it really started, with which employer and so on, saying that the definition is so wide that as soon as someone is exposed to any process or any form of occupation where this may occur, that automatically he will qualify as being a victim of an industrial disease, even though it may not have occurred at his work at all.

Another example that I have, which is a practical one, is a claim for industrial disease where someone contracted the deafness while being a paratrooper during the war. He hid that and claimed it from the last employer 15 years after. Imagine the backtracking we had to do to try to pin that down.

With the wording you have here, for example, if a man works in the engine room of a ship, as soon as it is established that engines on a ship can be noisy, he would qualify as being a person suffering from an industrial disease and entitled to full compensation for the rest of his life, even though it had no relation to his work.

Mr. Laughren: Mr. Cain might want to jump in here. In order to substantiate a claim for deafness, there has to be evidence of substantial exposure for a substantial period of time to a substantial level of noise.

Mr. Laurin: Based on the presumptions which are created by the act, it says that automatically if a person suffers from a disease which is prevalent or can manifest itself in the occupation the person has, he shall be deemed to have contracted it at work and be entitled to compensation.

The problem is one of trying to pin down where the disease occurred. Granted, the board has guidelines. Something has to be established. With what you are going to accept as legislation, it will be nearly impossible to show that the disease did not occur at work.

Mr. Sweeney: I have a couple of things. I was intrigued by the observation you made with respect to an appeal to the corporate board from the appeals tribunal. We had representatives from the Association of Injured Workers' Groups this morning and they took the same position you did, that it should not go to the corporate board.

If I understood you correctly when you were referring to section 86n on page 26 of the bill, you used the term "need an impartial reviewer." Did you have someone or some structure specifically in mind for our direction?

Mr. Laurin: There should be an administrative body--I do not know which would be the most appropriate or whether there is one in Ontario at the moment--external to the board which would be an appeals tribunal.

Mr. Sweeney: At the present time the only place a worker could go would be to the Ombudsman, and that is not a very happy situation.



Mr. Laurin: I am saying there should be an outside appeals board to hear any appeal and render a final decision on a claim. It should be completely external to the board and the actual compensation board should have no real influence on it.

Mr. Sweeney: Are you talking of, for example, a judge?

Mr. Chairman: I wonder if you are referring to something like the Ontario Municipal Board.

Mr. Laurin: Something similar to that or the Ontario Labour Relations Board, something which would be detached from the actual Workers' Compensation Board. In Quebec at the moment the final stage for an appeal is before the Social Affairs Commission, which hears appeals having to do with rights of practice of doctors, anything of that sort. It has created a lot of problems due to the backlog of cases. What has been suggested and accepted by the government is to have a completely outside tribunal that will be the final arbiter of claims. It is an outside judicial body.

Mr. Sweeney: The point you are trying to make, as I understand it, is that it should be apart from the board itself, distinct from it.

Mr. Laurin: That is right, outside, impartial and objective.

Mr. Sweeney: On your reference to employer access to employee files, I think there is a consensus in this committee, although I hesitate to speak for all the committee, that the phrase "relevant to the issue" is acceptable to us.

Our concern is that there are potentially things in the employee's file which really are not relevant to the issue at stake at all and truly the employer has no right to know. That is our concern.

I do not know how you get around that. You seemed to suggest before that about the only contingency you would add is that it would be a requirement of the employer to keep sections of information confidential. Surely--I go back and use your phrase--human nature being what it is, that is not much protection. If the material in the file that is not accessible to the employer is not relevant, I cannot see why you feel the employer should have access to it.

Mr. Laurin: In essence, the board, in its view and quite objectively, may think of the material as not relevant at all. In fact, another person may think it is and it may very well be relevant. Granted that this could lead to abuse, rather than giving full disclosure of such material when it is deemed irrelevant by the board, the employer at least might be given the right to look at the document to see whether it is relevant. It may be completely irrelevant, but I do not think it should be hidden in any way. If we are living in a democratic system, there should be full and frank disclosure.



Mr. Sweeney: Except that we are talking about personal information that deals with and reflects only on the individual employee. It has nothing to do with the case at hand. It has nothing to do with the employee's relationship with the employer in any way. It is personal, medical information that deals with him only. It might be psychological information; it might be something as highly personal as impotence; it might be a past history of cancer that has nothing to do with the issue at stake. I have great difficulty in seeing such information becoming part of the public domain of the employer. That is literally what it is, and it is none of the employer's business, quite frankly.

Mr. Laurin: I agree. My only fear is, having a system where there are rights of review and appeal and parties can argue their cases, even though I have the greatest confidence or trust in the board, I find it difficult to leave the board in all such cases to be the sole arbiter. I think there has to be some check or another. If we are to have an independent outside body, in such cases it should be given--

Mr. Laughren: How come you have confidence in the board when it is ripping you off?

Mr. Sweeney: I really wanted to voice my concern about that because, as I say, I think we have come to a consensus on that one, and I want you to understand it.

Mr. Laurin: I can see the concern. I can see the abuse. I think the question of relevance is a good one in principle, but I would like to have a third party on the board in the event that the employer would like to question it, look at the document and say, "I agree with the board that it is not relevant." If we had an external tribunal, the tribunal itself in such cases could, on application from the employer, confirm that it is not relevant.

I have seen cases where documents were not revealed as not being relevant when, in fact, they were, or perhaps they contained information that might be detrimental after a mistake had been made on a claim. I have seen that happen, so I think, without giving complete disclosure in the event that it is deemed to be irrelevant, someone else should be given the opportunity of looking at the document.

Mr. Sweeney: If we end up, as you say, with a third person who has nothing to do with the board, we may want to take a look at it then, but not at present. Let me go on to the next one.

3:40 p.m.

You made a proposal, if I understood you correctly, that an aggravated injury should be deemed a new injury rather than, as is the present case, an aggravation of the old accident. I am sure you must be aware of the fact that frequently being able to prove a link between the new injury and the old injury is the only way a person can claim compensation, because the new injury in and of itself may not be compensable. It is only when it is related to the former injury that it becomes compensable. In a case like that I do not see any it could be established as a new accident.

Mr. Laurin: I may not have been clear. My observations did not deal with the right to claim for an aggravation.

Mr. Sweeney: I thought you said that an aggravated injury should be considered as a new accident rather than as an aggravation.

Mr. Laurin: No, only in respect of level of compensation. What I am saying is that when a worker has an injury where he is entitled to compensation for 10 per cent of his earnings at the time of injury in 1980, and there is an aggravation in 1984 and his disability is increased to 15 per cent, that 15 per cent disability will be based on his 1984 earnings. I am saying the original injury should be compensated at 10 per cent for the 1980 injury and the aggravation, the five per cent, for his 1984 injury, rather than having the whole 15 per cent based on his 1984 earnings.

Mr. Sweeney: May I get clarification of that? I am not certain of that.

Mr. Laurin: What that proposes is that as soon as there is an aggravation to an original injury, the income base used for determination of compensation will be the income earned at the time of the aggravation.

Mr. Sweeney: But is it for the total percentage or just the income?

Mr. Laurin: Total, as I understand it.

Mr. Cain: Are you referring to the permanent disability pension or just payment of temporary benefits? In both cases, yes, there is an increase. For example, if a person injures himself in 1978 and returns to work--

Mr. Sweeney: That person has a permanent partial disability--

Mr. Cain: He has a permanent disability.

Mr. Sweeney: --and he has a pension, say, as was suggested, a 10 per cent pension.

Mr. Cain: Then his pension will be based on his pre-accident earnings since--

Mr. Sweeney: The 1978 rate.

Mr. Cain: Based on that, but let us assume the pension was not awarded until 1980; that was the first time the pension was awarded. He is going to get his pension based on his pre-accident earnings, plus any escalation factors that occurred in 1979 and 1980 by means of ad hoc amendments.

Let us say that in 1983 he is laid off again. If he had a job at the time he is laid off, we will use the new earnings to pay compensation while he is off work during the aggravation

period and, if because of that he gets another increase in his pension, that increase in pension will be based on pre-accident earnings, escalated by each of the yearly escalation factors that occurred through ad hoc amendments during 1979 to 1983. That is the way it is operational now and that is the way it would be operational under the new act.

Mr. Sweeney: There is no change.

Mr. Cain: No change.

Mr. Laurin: I was under the impression that if he had a 10 per cent disability pension and there was an aggravation increase to 15 per cent, the total 15 per cent would be based on earnings at the time of the aggravation.

Mr. Cain: It is the pre-accident earnings escalated during the various years of ad hoc amendments.

Mr. Sweeney: That is why I raised the question, because I did not understand that.

You made a reference to a spouse who is a common-law spouse with a child. I stand to be corrected, but my understanding about that wording is that it is the way the new family law legislation reads. In other words, it is up to five years, or from five years or more if there are no children, but if there is a child, it is literally immediate. In legislation we usually try to cross-reference them so they say the same thing.

Mr. Laurin: There is no mention of the limit of five years. I think that automatically--

Mr. Sweeney: Yes, there is. Which section was that? There is an A and a B part to that. The A part says five years and the B part says if there is a child, then it is right away. I cannot remember the section.

Mr. Gillies: Mr. Sweeney, the wording is consistent with the part of the Family Law Reform Act that refers to support obligations.

Mr. Sweeney: That is what I thought. I was only drawing to your attention that the reason for that wording is it makes it consistent. There are two sections in here if somebody can find them; I cannot. If you look at it later on, you will find there are two parts. The first part says five years. In other words, there has to be a permanency of at least five years. The second section only trips in if there is a child, and that is where the consistency is now. You can either agree or not agree, but that is why it is there.

You made reference to the term "suitable work". Are you aware of the fact that in this committee's report from our last set of hearings there was a pretty clear definition of what "suitable" meant. That is not in this legislation. Reference to "suitable" in this legislation is exactly the same as in the old



legislation; there is change, but in the other one there was a definition of what was meant by "suitable"; there were three distinct criteria.

I do not know if you have had a chance to take a look at that, but if you have not I would suggest maybe you might do so and you might give us the benefit of your criticism, either pro or con, as to whether or not you would find it more acceptable if that particular definition of "suitable" were put in this legislation.

As I say, you may or you may not, but we had the same problem. "Suitable" can mean literally anything to anybody. You can have two different officials interpreting it in two different ways. We thought we had pinned down that problem by giving a definition of "suitable". You may want to have a look at that. I am sorry I do not happen to have it with me, but I know we did it.

Finally, your clients' source of employees, if I understand it correctly, is through a hiring hall. In other words, literally--

Mr. Laurin: That is right; we have no control over employment.

Mr. Sweeney: The employee, in some ways, is really not an employee of the employer in the normal sense of the word; he just gets them as they are passed on to him.

The whole question of the right to return to work under those circumstances, I would think, simply does not apply. It is a different kind of relationship. Am I misreading it or is there something that--

Mr. Laurin: That is accurate. According to the collective agreements, the union despatches a seaman. The master will call his office or call the union hiring hall and say, "I need an able seaman to join the ship at Port Weller," and the seaman turns up at the ship, without going to the company, without going through personnel or anything like that.

The union selects the man and he is sent by the union to the ship. When he gets there, of course, he is then employed by the master who has him sign the articles. They have no control over the man; they have no control as to what will occur in the future about him. If he is to rejoin the ship, he goes to the union hiring hall and says, "I am available to work." He may go from Canada Steamship Lines to Algoma Central or Quebec-Ontario Transportation.

Even if you could compel an employer to take back a worker, it would be contrary to the collective agreements; in fact, the employer is not the one who controls employment or return to work.

Mr. Sweeney: I see. You make some reference in your brief to a particular job on a ship being filled by two or three different people over a season. Someone might get on at Thunder Bay and stay until Montreal, and somebody else comes on at Montreal and goes to Newfoundland or whatever the case may be.



Is that a jurisdictional requirement or does that just happen to be how the system normally works?

Mr. Laurin: It is the nature of the trade. I may mention that there has been some change where, due to economic conditions, there is a greater element of stability. In normal economic conditions, there is a turnover for each position, with two or three persons in the same position in the course of a year.

Mr. Sweeney: That is not a jurisdictional requirement?

Mr. Laurin: No, it is just the nature of the trade where people will stay on the ship for a period of two months and say, "I want to go off and do something else." They go off and you do not see them for another three or four months.

Mr. Chairman: Thank you, Mr. Sweeney, and thank you, Mr. Laurin, for your appearance.

It appears that we are finished with today's hearings--I am sorry, Mr. Gillies wanted to make a comment.

Let me make a comment too before I forget again. Handed out to you was a paper entitled Benefit of the Doubt; that was referred to in the asbestosis report this morning; that is what the group referred to this morning.

Mr. Gillies: I have one quick clarification, if I might, Mr. Laurin. On page 7 of your brief, at the very bottom, you said, "In cases where the widow wishes to remarry or live in a similar situation, she will avoid doing so or hide it to continue receiving monthly pensions."

You understand that under Bill 101 we do not propose to end the pensions on remarriage. That is more applicable to Weiler, but under our bill it would continue.

Mr. Laurin: I have noticed that; I read the bill.

Mr. Chairman: Thank you. We shall be back here at 10 o'clock on Tuesday morning.

The committee adjourned at 3:50 p.m.

C A20N  
XC13  
- 578

R-36

Government  
Publications

STANDING COMMITTEE ON RESOURCES DEVELOPMENT  
WORKERS' COMPENSATION AMENDMENT ACT  
TUESDAY, JULY 24, 1984  
Morning sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakubski, P. J. (Renfrew South PC)

Substitution:

Haggerty, R. (Erie L) for Mr. Riddell

Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

Staff: Revell, D., Legislative Counsel

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

Witnesses:

From the Employers' Council on Workers' Compensation:

Baird, P., Chairman; Member, Ontario Trucking Association; General Manager, Canadian Freightways Eastern Ltd.

Elgie, M., Chairman, Workers' Compensation Committee, Council of Ontario Contractors Associations; Vice-President, Reed Stenhouse Ltd.

Mandlowitz, J., Co-Chairman; Ontario Government Relations Officer, Canadian Federation of Independent Business

Morrison, O., Chairman, Workers' Compensation Committee, Canadian Manufacturers Association; Administrator, Benefit Plans, General Motors

Nixon, T., Actuary; with William Mercer

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, July 24, 1984

The committee met at 10:07 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: Ladies and gentlemen, we are ready to begin our morning's activity. We have one delegation to hear this morning. It is the Employers' Council on Workers' Compensation.

Before introducing the group, we have one question raised by one of the delegations last week. We would like Mr. Don Revell of the legislative counsel to help us clarify that.

Mr. Revell: Thank you, Mr. Chairman. On July 19, 1984, I was asked by Mr. Arnott, the clerk of the committee, to attend today to answer the following question, and I am paraphrasing the question which was asked of me: In the proposed subsection 71(2) of the act, as set out in subsection 24(1) of the bill, what is the effect of the following wording in the last four lines, "a decision of a majority of the board of directors, of whom the vote of the chairman or vice-chairman must be one, is the decision of the board of directors"?

In my opinion, the wording means that unless either the chairman or vice-chairman votes with the majority, then the vote would either be lost or, alternatively, there would be no decision made by the board.

Mr. Chairman: We will hear from the minister and then we will entertain any questions from committee members.

Hon. Mr. Ramsay: The rationale for inclusion of subsection 24(1) in Bill 101 was based on the notion that the Workers' Compensation Board chairman and vice-chairman of administration, in effect, constitute the element of continuity on the corporate board.

In the anticipation that this continuity would be thereby enhanced, it was judged appropriate that at least one of the two full-time members should form part of the majority decision, particularly in view of the overall responsibility of the board of directors for the determination of issues of broad policy.

Observations made before this committee last week drew attention to some of the additional implications of this approach, as expressed in the wording of subsection 24(1), and these have been confirmed by legislative counsel this morning.



The provision of what has been interpreted as a virtual power of veto or at least an ability on the part of board officials to block policy changes sought by the other members of the corporate board was not--and I repeat not--an intended effect of the approach pursued in this section.

I made it clear at the commencement of these committee hearings that I was fully prepared to listen and to give serious consideration to compelling and persuasive arguments advanced in support of proposed amendments to Bill 101.

In this particular case, I am certainly prepared to review subsection 24(1) and to look into possible alternative means of ensuring the degree of continuity that I believe is desirable in a body with potentially wide-ranging powers of a policy development nature.

Mr. Lupusella: Mr. Chairman, on the same issue, I appreciate the explanation given to us this morning, but I have some concern about this subsection as a result of interpretation. At this stage we went into the interpretation of this particular subsection. Is there any possibility of rephrasing it so that we can make the meaning clear?

The concern I have this morning is that if this is open to interpretation, when Bill 101 is passed I am sure the board will find it is open to further interpretation. My particular concern is to rephrase it to make the meaning more clear. I hope we are going to do that at the end of our deliberations on clause-by-clause reading.

Mr. Chairman: Are you prepared to accept the minister's comments now that he is open to reviewing it further?

Mr. Lupusella: Yes.

#### EMPLOYERS' COUNCIL ON WORKERS' COMPENSATION

Mr. Chairman: Thank you very much. At this point I would like to introduce the delegation we have before us. Mr. Peter Baird is the chairman. Perhaps, Mr. Baird, you would like to introduce your colleagues who are with you.

Mr. Baird: Thank you, Mr. Chairman. What I would like to do is introduce myself and then ask each of my colleagues to introduce himself.

My name is Peter Baird and I am chairman of the Employers' Council on Workers' Compensation. I sit on that committee as a delegate from the Ontario Trucking Association, which is a member of the council. In my own business capacity, I am the general manager of a trucking company called Canadian Freightways Eastern Ltd. I would ask Mr. Elgie to continue.

Mr. Elgie: My name is Murray Elgie. I am the chairman of the workers' compensation committee for the Council of Ontario Contractors Associations and as such sit on the employers' council as a representative of COCA. I am employed by Reed Stenhouse Ltd. and I am a vice-president with that company.

Mr. Nixon: I am Ted Nixon, a consulting actuary and principal with the firm of William Mercer Ltd. I assist the employers' council with understanding some of the actuarial implications of Bill 101. I have been working with the forest industry of Ontario over the past year on workers' compensation from the viewpoint of filling in finance and experience rating in the legislation.

Mr. Mandlowitz: I am Jason Mandlowitz, Ontario government relations officer for the Canadian Federation of Independent Business. I have been serving as co-chairman of the employers' council.

Mr. Morrison: I am Oliver Morrison, chairman of the Canadian Manufacturers' Association workers' compensation committee and I sit on the council as a representative from that body. I am employed by General Motors as an administrator in the benefits plans area.

Mr. Chairman: You may proceed in any way you see fit. We have until 12:30 p.m. or, if necessary, a few minutes more than that. You will probably want to leave time for the committee to ask questions of your delegation, so proceed in any way you wish.

Mr. Baird: Thank you, Mr. Chairman. What I would like to do is go through the brief we are presenting today and make some comments. I have not appeared before a committee of this nature before and I may not be as astute as others in the methods of how things are handled, but I would ask you to bear with me.

We basically take the view that we have responded to an invitation to appear before this body to make our views known. We would comment to you that our group has been together a little more than a year. We realize there have been committees working in the area of workers' compensation for a four-year program, and we certainly do not come to you today having all the answers to all the problems connected with workers' compensation, but we will attempt to respond in some degree to the questions that have been raised.

Since 1980, the government of Ontario has been reviewing the workers' compensation system in the province. Two reports by Professor Paul Weiler, a government white paper and a full report from the standing committee on resources development have emerged. To date, this review has demonstrated that employers as well as workers are dissatisfied with the existing system. In recognition that employers face a common set of problems, the Employers' Council on Workers' Compensation was created.

The ECWC is a broadly based coalition of industry and trade associations representing a majority of employers in the province. The ECWC members represent most sectors of the economy and employers of every size. The council was formed in mid-1983 to address assessment rates, legislative issues, board organization and health and safety education. The council tabled a submission in February 1984, entitled A Fair and Affordable WCB System, to respond to the final report in December 1983 of the standing committee.

We have copies of that with us today and we will leave them with you at the end of the proceedings so you may review it in your own time. The council is concerned that neither the final report nor Bill 101 constitutes a fair and affordable workers' compensation system and we certainly appreciate this opportunity to address the areas of our concern.

One of the items that has occurred since we have been formed is the commitment we had given to the consultation process involving the areas of workers' compensation. We support completely the four-year review to bring the system into line with the employees' and employers' needs. We certainly have some serious concerns regarding the financial problems re Bill 101 and the workers' compensation system.

The associations listed below endorse this submission, and I would like to read them into the record.

Canadian Association of Recycling Industries; Canadian Federation of Independent Business; Canadian Manufacturers' Association; Canadian Meat Council; Canadian Warehousing Association, which was not able to get to us in time before printing but we have received verbal assurance that it would like to be recognized as being in support; Council of Ontario Contractors Association; Dry Cleaners and Launderers Institute (Ontario);

Industrial Cartage Association of Metropolitan Toronto; Motor Vehicle Manufacturers' Association; Ontario Automobile Dealers Association; Ontario Forest Industries Association; Ontario Hospital Association; Ontario Mining Association; Ontario Trucking Association; Ontario Waste Management Association; Ready Mixed Concrete Association of Ontario; Retail Council of Canada; Rubber Association of Canada; Shoe Manufacturers' Association of Canada, and Toronto Automobile Dealers' Association.

As we mentioned, you can see that is a pretty broad perspective of the employer group within the province.

In regard to the principles of workers' compensation, the ECWC is dedicated to achieving a system that is fair and equitable for all participants. The workers' compensation system in Ontario was historically based on maintenance of income for on-the-job injury. Employers have funded workers' compensation since 1915, ensuring that workers receive compensation for lost time off the job. In return, workers have agreed to forgo civil action for suit. As a result, a no-fault insurance system has come into place.

10:20 a.m.

Employers continue to support the basic tenets of the workers' compensation system and are prepared to work towards a more effective approach. Workers' compensation was intended to protect the earning capacity of the injured workers. It was intended to provide medical assistance and rehabilitation along with retraining facilities for the injured employee. The Employers' Council on Workers' Compensation continues actively to support and endorse these principles.



However, employers have been concerned for some time by the trend during an economic downturn to use workers' compensation as a substitute for general income maintenance programs. While recognizing that there may be a need for increased access to income support, the council is concerned that workers' compensation has become a social net, taking on more than its fair share of social responsibility.

Ontario's \$5-billion problem: The Employers' Council on Workers' Compensation has taken the position that before any workers' compensation benefits adjustments could occur a full and independent costing of all recommendations be undertaken and made public. The Ministry of Labour commissioned the Wyatt Co. to prepare an independent costing of the proposed amendments in Bills 99 and 101, as well as the board's unfunded liability. The Wyatt reports examine five specific recommendations. However, the reports fail to address the new costs arising from such proposals as administrative changes, removal of the one-day waiting period, financing health and safety education, and broadening the use of medical aid to health care.

The Wyatt reports do, however, indicate that for five recommendations only, \$86 million will be added to the cost of one year's new claims. The employers' council was shocked to learn that as of year-end 1983 the unfunded actuarial liability of the WCB was \$4.9 billion, given a fully indexed act.

The council adds that Bill 101 will add at least \$86 million to the existing board liabilities which, by year-end 1983, are more than double the entire Ontario 1984 budgetary deficit of approximately \$2 billion.

In addition to Bill 101 costs, states the council, employers also face 15 per cent compounded assessment rate increases which are triple the province's inflation restraint guidelines.

With this in mind, the council feels it appropriate to ask that the standing committee on resources development question the depth of the actuarial review. For example, why is the standing committee not more concerned with the dramatic increase in persistency rates, that is, the length of time on benefit?

We have a piece that was late to come, but I would like to read it into the record. We will leave copies for your committee to review. This has been prepared by our actuarial consultant, Mr. Nixon. It is entitled, The Financial Significance of Unlimited Recurrent Disability Under Workers' Compensation.

The fundamental concept of workers' compensation is that all future compensation awards or payments to a worker that can be traced to a particular earlier injury are deemed to be a continuation of the original injury, regardless of the length of time separating the successive series of payments. Thus there is an unlimited recurrent disability permitted. It is more common in other forms of disability insurance to provide that successive periods of disability payments separated by more than a specified time period must requalify as new claims.



It can be shown that the dramatic increase in awards granted during the 1982 and 1983 years of the current economic recession can be traced directly to a significant increase in the recurrence of old claims.

Analysis of the awards paid in 1982 is useful. The accident rates have remained relatively stable over the past five to six years. Thus, the increase in awards paid can be attributed to inflation in benefit levels and a deterioration in the persistency rates, i.e., the length of time on claims.

The deterioration in the persistency rates is of greater concern and has two aspects.

During 1982, claimants who received compensation for accidents which occurred in 1982 tended to stay on claim much longer than did new claimants during the 1975-1979 period. It has been identified that clause 41(1)(b) contributes to this problem. We have calculated that if the 1975 to 1979 average duration of new claims had existed in 1982, about \$35 million less in temporary compensation awards would have been paid in 1982.

During 1982, temporary compensation claims stemming from accidents in earlier years were reopened with greater frequency. As well, relatively far more permanent disability pensions were granted or reopened. In fact, if recurrent disability and the rate of awarding pensions had followed the 1975-79 levels, then awards granted in 1982 would have been reduced by the following amounts, and we are talking about reductions here: Temporary compensation would have been reduced by \$57.1 million, medical aid would have been reduced by \$8.1 million and permanent disability pensions would have been reduced by \$72.1 million, for an overall reduction of \$137.3 million.

It is difficult to understand why this \$137 million was paid. Clause 41(1)(b) would seem to have less application to recurring claims than to new claims; thus, there appears to be less legislative justification. The amount is far in excess of the costs of all new improvements being proposed by Bill 101. A similar analysis for 1983 is expected to yield even larger amounts of questionable awards when those figures become available.

The problems being created by the unlimited recurrent disability concept include the following: The major cause of the unfunded liability is the increased use of recurrent disability during the economic recession. The unacceptable increase in awards flowing from the recurrent disability is leaving us with no financial capability to provide benefit improvements to severely injured workers. Assignment of costs to the original employer on claims reopened several years after the accident may no longer be useful or appropriate; workers are more mobile and may have changed jobs.

Industries are being restructured, with reduced numbers of employees in many cases, in order to become competitive in world markets. Rehabilitation efforts by employers to control the costs of reopened claims are not possible if the employee has left. The new employer has no incentive to help claims control since the cost is assessed against the previous employer.

Assessment rates are becoming extremely high and, in fact, are artificially repressed currently, with no contribution being made to the payment of the unfunded liability. The result is a transfer of costs to future generations of employers. The unlimited recurrent disability concept is the major cause of this problem.

Introduction of experience rating in several industries at the employer level undoubtedly will raise objections to the costs assessed on reopened claims where the employee has long since departed and, thus, the employer can have no impact on claims control.

It appears that neither the politicians nor Professor Weiler has questioned the unlimited recurrent disability concept, the dramatic increase in costs associated with it and the range of problems being created.

Given the financial significance, it would seem desirable for the elected representatives to give full support to the workers' compensation management team and claims adjudicators to ensure that only valid claims are being paid; to investigate and analyse whether a decline in the persistency rates that produces an extra cost of \$137 million in one year is acceptable; to consider the use of more rigorous claims control procedures on claims reopened after several years of inactivity; to consider formally closing more temporary compensation files when the claimant has made a recovery; to consider assessing some of the costs of reopened claims against a successor employer; to consider limiting the recurrent disability concept where successive periods of disability are separated by a suitably long period of time and several years have elapsed since the date of the original accident; and to recognize and study this problem in relation to the wage-loss concept of disability awards.

A deterioration in persistency rates that appears to have cost in excess of \$100 million during 1982 without any investigation or serious expression of concern by our elected representatives is unacceptable to employers in this province.

10:30 a.m.

One of the other things we have prepared as well--and this was prepared prior to Bill 101 being introduced to us--takes into consideration the total payroll taxes for four types of firms in Ontario. One is a general contractor, two is a restaurant operator, three is a garage operator and four is a wire products manufacturer.

For example, based on statistical data we have put together, the general contractor having an average wage in November 1983 in excess of \$21,000, assuming 20 people employed, gives us a projected payroll of \$428,000. The combination of unemployment insurance, Canada pension and the major contributor, workers' compensation, equates to an expensive \$50,000 to that employer. As you can see in relating to the above, that is the equivalent of two jobs in that particular work place. The examples go on across the board.

For a wire products manufacturer, as an example, with an average wage of \$23,000, utilizing 50 people employed and with a payroll of \$1.1 million, the combination of all those taxes is in excess of \$82,000. Again, the number of jobs affected or that this particular person would be able to employ relates up into the three or four jobs we are talking about.

We will have copies of this, Mr. Chairman, to be passed to your committee.

Mr. Chairman: Perhaps you would leave the documents you have with the clerk to have them copied for all members.

Mr. Baird: Yes, we will. Thank you, sir.

To continue with the questions, why is the evaluation of existing liabilities at two per cent net, while the evaluation of the five specific proposals done by Wyatt is at 7.25 per cent? Why has the Wyatt report hedged on costing proposal number two, benefit supplements? Why has the Wyatt report considered cost estimates for rate groups on an average assessment basis versus individual groups?

The cost estimates prepared for the Ministry of Labour have been based on all rate groups, combined with an average assessment rate expressed for the entire program of workers' compensation. It is not appropriate to use average statistics to draw conclusions about industry's ability to pay. The range of rates is currently from 28 cents to \$25.13 per \$100 of payroll, with the 1984 average rate of \$2.17 being weighted very heavily on the low side because of the large white-collar rate group which is assessed at 28 cents.

The workers' compensation program has only minimal application on low-rate groups. Decisions about the ability of Ontario industry ability to pay should be made on the basis of cost increases for those industries or rate groups where workers' compensation is already a significant expense.

For example, it would be preferable to focus on rate groups whose current rates are above the \$3-level where a large increase in cost would represent a significantly higher payroll burden. These industries tend to be the producing industries which have already been hard hit by the recession. This would be a tremendous debt load for the Ontario economy to absorb in conjunction with other legislated costs which are also escalating.

With regard to Bill 101 on cost considerations, the ceiling on covered earnings, while it is clearly desirable to have compensation benefits bear a reasonable relationship to an employee's earnings, a large immediate increase beyond the present earnings ceiling of \$26,800 will have a very dramatic cost impact for some industries. An industry which has average earnings in excess of the current ceiling will be impacted most severely.

The Employers' Council on Worker's Compensation believes the ceiling of \$31,500 being proposed by section 41, as amended by section 11 of Bill 101, is unacceptable in the current economic climate. A \$31,500-ceiling represents an increase of 17.3 per cent



over the current ceiling. When coupled with a proposed 15 per cent compounded annual assesment rate increase for the next three years, it may be beyond the affordability of industry. The employers' council, therefore, recommends that any increase in the ceiling on covered earnings continue to be governed by the five per cent inflation restraint guideline.

As a further example, being in the trucking industry and utilizing the prior-to-Bill-99 ceiling of \$25,500 at our current rate of \$4.73, it produces an expense per year per employee of \$1,206.15. If we project the increase in ceiling to \$31,500 and we look at a 15 per cent increase in the \$4.73 rate, which takes it to \$5.44, the combination of those two increases produces an annual expense per employee of \$1,713.60 for someone in the trucking business, which is an increase of more than \$500 in one year and relates to an increase of 42.1 per cent in one particular area. As a trucking employer, I can assure you we certainly cannot stand those types of cost increases. I am sure you will find upon examination that the same thing is true in many of the other industries.

Many people get the idea that we have increased things by only five per cent, but we get into the double-jeopardy situation. We increase the benefit levels by five per cent, then the ceiling has got to go up so it does not jeopardize something else, and then we have to increase the actual rate itself. All those have a pyramid effect which impacts very severely on the employers of this province and, as we have said in our brief, more severely on those who are in the higher rate rather than the 28 cents.

Benefits, calculation of earnings: Subsection 43(1), as created by section 11 of Bill 101, deals with the calculation of average earnings. The employers' council strongly recommends that clause 43(1)(a) be amended to exclude overtime from the calculation of average earnings and read as follows:

"Calculate the daily or hourly rate of the workers' earnings, exclusive of overtime, with the employer for whom the worker worked at the time of accident, as is best calculated to give the rate per week at which the worker was remunerated at the time of the accident."

We also recommend that clause 43(1)(b) be deleted, as it becomes redundant.

Benefits supplements/"suitable and available work" concept: The basic premise of compensation is to provide benefits to an injured worker. The benefits must be based on the disability, not the availability of work.

Clause 40(2)(b) and subsection 45(5), as created by section 11 of Bill 101, deal with the major issue of supplementing temporary and permanent benefits. In the current act, clause 41(1)(b) and subsection 43(5) are creating unacceptable situations for the financial experience of the workers' compensation plan in this period of recession. They tend to provide unemployment benefits and, as such, constitute an abuse of the program. The extent of this distortion is financially significant and prevents



available funds from being allocated to severely injured workers. The employers' council believes Bill 101 does not address the problem of clause 41(1)(b). At the same time, Bill 101 liberalizes subsection 43(5).

There is a need to deal with the current problems being created by the inequities and distortions associated with clause 41(1)(b) and subsection 43(5). The employers' council believes the following criteria are important elements of a solution:

The problems of abuse currently related to the extension of temporary compensation payments are quite different from the problems associated with the supplemental payments to permanent pensions. Although each is aggravated by the recession, they require different solutions.

The approach used by Saskatchewan to define "suitable occupation" appears to have considerable merit.

The lack of availability of work should not be a criterion for continuing compensation payments or supplementing pension payments. Any such extension or supplement should be clearly related solely to the reduced potential for re-employment created by the injury.

10:40 a.m.

It should be absolutely clear that for an injured worker who is fully recovered, there is no possibility of a continuation of benefits. A fully recovered worker is the equal of any other employee and cannot and should not have a preferred position.

What happens in some cases is that those who are injured on the job and are on workers' compensation, compared to a fellow employee who is not injured but gets laid off from the same company, are actually receiving a premium over the employee who is the safe worker and has to rely on unemployment insurance benefits versus the compensation benefits applied under clause 41(1)(b).

Since the remedies in general seem to involve continuation of temporary compensation payments or supplements to a previously determined disability pension, perhaps these two situations should be addressed directly.

For a more detailed review of the employer concerns with respect to benefit of supplements, we would refer you to appendix A. That is found on page 17.

The subject of "suitable and available" work: The definition of the problem, the application of the concepts and the impact of claims experienced has been a source of concern to injured workers, employers, the Workers' Compensation Board, Professor Paul Weiler and elected members of the Ontario Legislature.

Employers and injured workers have significantly different views of the nature of the problem being addressed by "suitable and available work" concepts. Until there is at least a consistent understanding of the concept, it will be a source of irritation to

all parties. The purpose of this document is to point out the concerns of the Employers' Council on Workers' Compensation and to present some constructive ideas for solutions to the problem.

Under the existing situation, there are two sections in the existing act which deal with "suitable and available" work. They are clause 41(1)(b) and subsection 43(5). I will not read into the record the sections of the act themselves because they are readily available.

We go on on page 18 and say that it is clause 41(1)(b) that is creating difficulty and concern for employers in the current economic recession. Note that clause 41(1)(b) deals with temporary compensation payments, where subsection 43(5) deals with temporary supplements to an approved permanent disability pension.

This section is a major concern to employers because (a) it tends to produce unemployment insurance type benefits, which is not the intent of workers' compensation; (b) it is subject to abuse during times of economic recession; and (c) it creates greater benefits for disabled employees than for active employees, where active employees have been terminated by layoff or plant closure and the injured worker continues to receive workers' compensation benefits.

Typically, as the claimant nears recovery and makes himself or herself available for work, constitutes himself or herself as a partial disability and co-operates with rehabilitation efforts, because work is not available, the board interprets the section to mean this benefit must be maintained at the full temporary compensation benefit level.

The language of clause 41(1)(b) makes the problem more difficult. It seems to suggest that a temporary total claimant who has become a temporary partial claimant can revert to the full 75 per cent level if "suitable work is not available." This is different from a total temporary claimant who has fully recovered but for whom suitable work is not available. In the latter case it would suggest nothing further is payable.

Employers are more concerned with clause 41(1)(b) because (a) the claims are shorter term in nature and thus the disabled workers are more closely identified with the employer; (b) the abuse is more readily apparent; and (c) the severity of the claim is somewhat subjective because by definition the individual is only partially disabled, if disabled at all. On the other hand, elected representatives are less likely to hear complaints of these situations for precisely the same reasons.

It is difficult to determine precisely the amount of additional benefits being paid due to the recession. Many payments caused by the existence of clause 41(1)(b) are just paid as a continuation of the original full temporary compensation claim to avoid the extra paperwork of allocating payments to clause 41(1)(b).

We then refer to subsection 43(5) and go to page 21. Subsection 43(5) deals with permanent disability pensions and is a

major concern to employers because (a) it creates discretionary powers for the Workers' Compensation Board; (b) it generally involves more severely disabled workers who may be getting an inadequate pension; and (c), to the extent that the pension is genuinely inadequate, the issue becomes a public relations problem for the company. The above concerns are shared by injured workers, the Workers' Compensation Board and members of the Ontario Legislature.

The problem is aggravated because most pensions are awarded in the 15 to 20 per cent of earnings range. Subsection 43(5) supplements are temporary in nature, usually six to 12 months. Subsection 43(5) supplements are related to earnings at the onset of disability, which could be several years earlier.

There has been considerable discussion about subsection 43(5). It is recognized that the elected representatives are more likely to receive complaints from injured workers relating to this subsection. On the other hand, employers are often not as aware of these complaints because in many cases the injured worker has become completely separated from the original employer. Over the past year or two there has been a dramatic increase in payments under this subsection.

Thus, within the current act the definition of "suitable and available work" needs attention. The proposed amendments in Bill 101 do not address the employer's concern. To the contrary, Bill 101 restates and liberalizes clause 41(1)(b) and subsection 43(5).

If I could, I will leave the rest of that because it is repeated a little later on in our brief.

One of the other things we have looked at well with regard to supplements is temporary and permanent benefits. This is taken by our actuary from information that is on the public record.

Clause 41(1)(b) seems to have its greatest application to new claims each year. We talk here about the 34 per cent longer duration of claims. We go to substantiate our earlier item that we read into the record about the \$147 million of temporary compensation payments in 1983. As we said earlier, we believe \$37 million of that is directly attributable to the increased duration of claims.

Continuing on page 9, it is our understanding that the claims duration during the period 1975 to 1979 averaged seven weeks. Currently, for the year ending December 31, 1983, the average has jumped to 10 weeks. There is every reason to believe that in 1984 it will even be higher. With this in mind, the employers' council recommends that the standing committee consider enacting the administrative guidelines to sections 68 and 69 of the Saskatchewan Workers' Compensation Act. We have copies we can leave with you, Mr. Chairman.

10:50 a.m.

Benefits for older workers: Subsection 45(7), as created by section 11 of Bill 101, provides for a supplement to older workers



who are unlikely to benefit from vocational rehabilitation that could lead to employment. The employers' council is concerned that this section exceeds the basic insurance principle upon which workers' compensation is based, thereby creating a legislative precedent for retirement income provisions that should be provided through available society-wide programs. Before discussing this section further in detail, we feel we need more details, including costs that might be required.

One-day waiting period: Subsection 3(2) of the act, as created by section 3 of Bill 101, eliminates the one-day waiting period. The employers' council notes that when the Workers' Compensation Board changed the waiting period from three days to one day, the number of claims increased substantially. With the guarantee of wages for the first day of injury being covered by the employer, there is good reason to expect the number of claims will increase again. The employers' council recommends that subject to the conditions of employment already in place, the one-day waiting period be retained.

Spousal awards: Section 10 of Bill 101 repeals section 37 of the act. The employers' council believes that pension awards and rehabilitation benefits should cease on the remarriage of the surviving spouse. The employers' council therefore recommends that section 37 of the act be reinstated and that section 38 be reinstated and amended to be consistent with section 38 as created by Bill 101.

Again, we feel there are lots of sections and precedents dealing with this whole action of fatal accidents and awards that are given that terminate when the spouse remarries. We do not think the Workers' Compensation Act should be any different from those.

Financing health and safety education: Clause 71(3)(j), as created by section 24 of Bill 101, authorizes the Workers' Compensation Board to extend financing for health and safety education. The employers' council recommends that the funding continue to be exclusively provided for the nine existing employer safety associations.

The council also recognizes that some segments of the industry are not currently covered by a safety association, and the employers' council further recommends that the safety association structure be expanded as necessary. What we are talking about there is expanding the services of the existing nine rather than creating an additional five or six new associations.

Permanent partial pensions: This is a subject of great concern to the employers' council. The council believes the standing committee must consider the impact of claims control and claims adjudication on the system. What must be kept in mind is the need to provide a workers' compensation structure that encourages the injured worker to return to the work place as soon as possible.

As one possible approach, the employers' council proposes a one-time payment for those injuries that will not significantly



impair a worker's opportunity to obtain comparable work. The Workers' Compensation Board should establish a fair level of compensation, taking into consideration as one important factor that in 1982 about 85 per cent of all active paying pensions accrued to workers with less than 30 per cent impairment. The average level of impairment for that year was 18.78 per cent. Already, where a 10 per cent or less impairment level exists and where no anticipated change in the condition is expected, lump sum settlements are paid on an actuarial basis.

Although one-time payments of small permanent partial disability cases violate the loss of income principle, the employers' council is prepared to countenance the violation to reduce the board's administrative complexity and cost as well as provide injured workers with an immediate settlement and a more workable system. This would replace the current approach where individuals with an impairment of 10 per cent or more receive regular workers' compensation benefits in perpetuity.

Medical rehabilitation and retraining would continue to be available. However, about 24 months from the date of the injury, the responsibility of the board to the injured worker would cease. This date would be fixed except in unusual circumstances, to be certified by the medical review panel only. Applications to continue with board assistance beyond the 24-month deadline could be evaluated and, of course, appeals considered.

For individuals with serious levels of impairment, the employers' council proposes periodic payments with no lump sum when wages are lost. The board would establish a schedule for which regular benefit payments for lost income, medical rehabilitation and retraining would occur. This schedule would extend upwards in the case of greater impairment cases.

Board obligations would be exhausted when the injured worker was certified to be employable. In these cases, the schedule would begin from the date of injury and remain firm except in usual circumstances, to be so certified by the medical review panel only. Workers could apply for extensions and appeals would be permitted.

Administrative and structural changes, corporate board: Section 56, as created by section 15 of Bill 101, establishes a new corporate board with outside directors. The employers' council supports the establishment of a corporate board with an executive core and outside directors but has a number of questions concerning the proposed powers of the board.

To whom does the board report? Will the powers of the board be set out in regulations? Will the powers of the board of directors be similar to those of directors in a public company?

The corporate board should not affect the decision of the independent appeals tribunal, and section 78 of the act should clearly reflect such independence. The decisions taken by the appeals tribunal should be final.

The employers' council recommends that, in addition, employers have a majority representation on the corporate board.

Nominations from industry for individuals to serve on behalf of employers should be accepted. If industry is expected to carry the monetary burden of compensation costs, then industry must have majority representation on the corporate board.

I do not think that is unlike any development where people who are paying the bills feel they should have majority representation. If this were a scheme that was funded by employees and we were going to get into a board, I would think the employees would like to have the majority representation. If it were going to be funded by government, I think the government would want to have the majority representation. We do not think we are asking for anything unfair in that particular area, given the fact that we are funding it.

The industrial disease standards panel: The employers' council supports the concept of an industrial disease standards panel and recommends that employer participation on this panel be guaranteed.

Medical examinations under sections 21 and 22: The employers' council strongly opposes the deletion of sections 21 and 22 of the act by section 8 of Bill 101. The repeal of these sections would mean the only way an employer could require a worker to have a medical examination would be through the appeal procedure. The employers' council recognizes these sections were rarely invoked because it was common knowledge among workers that the employer had this option available. The employers' council recommends in the strongest possible terms that section 8 of Bill 101 be deleted.

Medical tribunal: Subsection 86h(1), as created by section 32 of Bill 101, establishes that a list of medical assessors who can serve the appeals tribunal be created. The employers' council recommends that the list of medical assessors be supplied by an organization like the College of Physicians and Surgeons of Ontario or the Ontario Medical Association, occupational physicians' section.

Access to medical records: Section 77, as created by section 28 of Bill 101, limits employers' access to employee medical records. The employers' council recommends that the principle of fairness requires that equal access should be allowed to the employee and the employer to all records held by the board in respect to a claim. The employer in this case is defined as a health care professional delegated to receive and assess medical information and advise management.

11 a.m.

Mr. Chairman, that is the extent of our brief today. As we said earlier, this subject has been under substantial review over the last period of years. We as employers are not only funding the particular Workers' Compensation Act, but in dealing with our employees, also take our responsibilities very seriously in this matter. We are and have been committed since the formation of our employers' council to work with those who would like to see improvements made in the workers' compensation system in Ontario.

We do not come before you having or portraying to have all the answers; we certainly do not. It is a very complex subject. However, we are very concerned about the system itself and the financial instability of the system.

In reading some reports, I have seen people say the \$4.9-billion unfunded liability would only come into play if we had to pay everything today. From a business environment, our concern is that we have to consider our financial obligations. We do not think it is totally fair to any of the participants in the system to allow that unfunded liability to gallop away. In checking the records, we have certainly not seen growth in this area of unfunded liability only in recent years, the last decade or so. A lot of factors have come into play, some of which we have mentioned in the brief.

We agree with the injured workers that there are some cases out there that are unfortunate in the levels of benefits they are receiving. By the same token, when we look at the number of cases on file with the board itself, we hear from no one on a vast majority of those cases. People are very happy with what is happening. Maybe in some cases the payments have been a little overgenerous. Some of those folks have and are receiving a generous situation, while others who are now vocal in the situation are not receiving enough.

We are pledged to work towards improvements in this act, as I mentioned earlier. We are here today and we will try to answer any questions your committee may have. If we do not have the answers, we will certainly undertake to get them for you and get them back to your committee. We appreciate the opportunity of being able to appear before you this morning; I think you can see that by the delegation that is supporting us here.

We are trying to raise the awareness of workers' compensation with the employers in this province and are meeting with a great deal of success. It is something employers have been silent on for too long, contrary to what is reported in the press from time to time. The employers in this province are very concerned about the state of workers' compensation, and we want to come to some resolution of the issue in the near term so we can have a system we are all proud of and one that works in everybody's interest.

Mr. Chairman: Thank you, Mr. Baird, for that well-prepared and well-presented report.

Mr. Sweeney: When you were referring to the \$4.9-billion actuarial unfunded liability, you used the expression "costs artificially depressed." I believe I am quoting you accurately there. I think you were referring to an actuarial report that you sort of pulled out from the side and said you would give us a copy of. We were given copies of costs last Wednesday or Thursday which showed that for about a three- or four-year period within the last five or six years, the average costs to employers per \$100 of payroll actually went down. They went from about \$2.10 down to about \$1.80 or \$1.70, something like that. It has only been in the last couple of years that they have gone back up again to about \$2.17 last year.



When you use the expression "costs artificially depressed," that partly accounts for that very large unfunded liability. That seems to be one side of the equation. The other side of the equation is that this year there has been an attempt to get an agreement to have an increase of about 15 per cent for something like the next three or four years to try to bring that whole thing back into balance again or at least to make a beginning.

My question has to deal with why, on the one hand, you recognize there was an artificially depressed cost over the last number of years and at the same time there now has to be an increase of costs, which is also artificial. It is well beyond the five per cent limit as you referred to it. How else could we deal with that question other than in the way it is being dealt with now?

Mr. Baird: I would like to ask Mr. Nixon to comment initially and then perhaps we can give you some additional information.

Mr. Nixon: The reference to artificially depressed currently did not refer back to the 1979-80 period but to the fact that the rate increases have been held to 15 per cent last year, this year and perhaps will be for the next couple of years as well, when in fact they ought to be higher than that. My concern was that if these persistency rates keep going the way they are, that is shifting costs to future generations. I think you misunderstood the reference to costs being depressed artificially. It was not back to the 1979-80 period. It is what is happening right now.

Mr. Sweeney: Let me rephrase my question. I think there is a recognition, from what you have just said, that there was a period in the last five or six years when the cost to employers was artificially depressed and when the actual rates went down in a way that was actuarially unsound. They should not have gone down, frankly. If the actuarial information had been heeded--Wyatt's report clearly made that information available--there was no economic reason, no sound insurance reason why those rates should have gone down. Am I right or wrong?

Mr. Nixon: That is a little open to question, in that there was an actuarial basis for putting the rates down at that time. Hindsight is terrific.

Mr. Sweeney: How can you have a deficit in excess of billions of dollars and actuarially justify putting the rates down?

Mr. Nixon: Because you did not have the deficit then. At the time those rates went down, there was not a big deficit. The big deficit really arose in 1982 and 1983. It has risen primarily from the worsening persistency rates that occurred in 1982 and 1983 and is going to happen in 1984, but in 1979 and 1980 those persistency rates had not started to tail off badly because we were still in a boom period.

Persistency rates are strongly linked to economic cycles. I think it is quite possible, if we get a boom period going around,



that we could see the unfunded liability drop if they follow the same actuarial techniques, because we will replace the persistency rates with persistency rates that happen in a boom period. Some of that unfunded liability will drop off. That is quite possible. My comments are related to the high costs associated with allowing the persistency rates to worsen in an economic recession.

Every insurance industry in this business knows that you have to manage the heck out of your claims during an economic downturn. It is a statistical fact that if you do not do that, you will go bankrupt. It is very understandable that you are going to see the worst cases. You are never going to see the borderline cases because nobody is ever going to complain about them. Unless you get a handle on that during an economic downturn, you are dead in the water. There is enough money in that system now to do everything you want to do.

Mr. Sweeney: Let me take the second part of your own observation, that the present proposal to increase rates at 15 per cent, I believe for the next three years, is actuarially unsound. That is what I hear you saying.

Mr. Nixon: That is true.

11:10 a.m.

Mr. Sweeney: As a matter of fact, I think the original proposal was to increase them by something like 28 per cent. There was a broad representation from employers who said: "Look, fellows, we cannot take that. Let us negotiate this." I do not know to what extent there has been agreement on even the 15 per cent, but surely moving from 28 per cent down to 15 per cent, spreading it initially over three years and then after that, I think, over something like 30 years, seems to be a much more reasonable approach.

Mr. Nixon: Yes, I agree.

Mr. Sweeney: Why would you disagree with it then? I heard your spokesman and I--

Mr. Nixon: You asked me if it was actuarially sound. It may not be actuarially sound, but it may be eminently more reasonable from a business viewpoint to do that.

Mr. Sweeney: Okay, but you see the dilemma we are in.

Mr. Nixon: Yes, absolutely.

Mr. Sweeney: We have to deal with that factor as well. We have to deal with the political reality of your ability to pay the shot, and we recognize that. But at the same time we also have this reality of a large sum of money that has to be paid, and we have to come somewhere down the middle. So, quite frankly, you put us in an impossible bind when you say, "Do not do this, do not do this and do not come down the middle." That is not possible.

Mr. Nixon: On the other hand, to be fair, from an

actuarial viewpoint it may not be the most appropriate thing to assume that the current level of persistency rates is going to obtain forever, and that in fact is what is being done.

Mr. Sweeney: Sure it is.

Mr. Nixon: It may well be far more appropriate, and a useful question, to say, "If we get out of this economic downturn three years down the road and if we return to the old level of persistency rates, tell us what the long-term costs look like." Assume that you are going to have bad persistency rates for the next three years and we are then going to come slowly out of them and go back to the old ones again. That might be a much more realistic approach to take, given that they appear to be so sensitive to the economic situation.

Mr. Sweeney: But at the same time you are also aware, I am sure, that the number of accidents is sensitive to the economic situation.

Mr. Nixon: No, they are stable. They are staying relatively stable--a little peak.

Mr. Sweeney: There was a considerable decrease.

Mr. Nixon: Yes.

Mr. Sweeney: The total number of accidents per year was in excess of 400,000. It went down to about 330,000 or 340,000--

Mr. Haggerty: Fewer people are working now.

Mr. Sweeney: --obviously because there are fewer people working.

Mr. Nixon: But the rate was going down too.

Mr. Sweeney: The relationship can work both ways.

Mr. Nixon: But through the recession the accident rate has remained relatively stable.

Mr. Sweeney: We are thinking of total claims. The percentage might remain stable, sure; there is no reason for--

Mr. Nixon: The total claims are going to go down because there are fewer working.

Mr. Sweeney: Yes. As a matter of fact, that is one of the things that deeply concerns us, because in the long run the only way either side--well, all three sides: government, management and labour--is going to resolve this situation is by reducing the total number of accidents, or at least by reducing the percentage of accidents, because the total number goes down as the employment rate goes down. That really bothers us, quite frankly.

Mr. Nixon: I think our concern is about persistency rates right at this time because--

Mr. Sweeney: If we can stop the accidents, we can reduce the persistency rates.

Mr. Nixon: --given that there is \$100 million in there, any part of that would certainly go a long way towards doing whatever you want to do in legislative improvement.

Mr. Sweeney: I would like to touch on one other area. Because you are employers representing employer groups, I am a little bit unsure how to handle your proposal, and that is that successor accidents--and I presume you are talking of one for which a clear relationship to the original accident can be shown--should be borne by the successor employer as opposed to the original one; that is the proposal as I understand you. You are the first employer group I have heard make this recommendation, and we have been sitting in this committee off and on for almost two years.

The problem, of course, is that we get bitter complaints from employers who take on a new employee and say: "He is with me three or four weeks, that bad-back goes out and my firm had absolutely nothing to do with that accident. It happened in somebody else's place two years ago and now I have to bear the costs. That seems totally unfair."

We have the big problem of employers not wanting to take on a new employee who has a workers' compensation record because he might have a recurrence. It seems to me all the steps that have been taken over the last few years to deal with this issue have been the appropriate direction in which to move, and now you are telling us, "Hey, no, we do not think that is fair."

I must admit I am a little bit confused. I do not know whether you want to go back to the old system, because we received bitter complaints about that old system.

Mr. Elgie: I think what we are referring to in our presentation is, once again, the same as the persistency rates, and that is overall claims management. Where you have a recurrence of an old injury of this nature and the employee has gone to a second, third or fourth employer since the original one, it is very difficult to establish the actual causal relationship to the recurrence. Does it relate back entirely to the previous accident, is there some aggravation under the existing employment or is there some off-employment aggravation? We would like to see the overall claims management tightened up. I think this will be one of the side benefits of that tightening up.

If we recognize it is a legitimate claim, we want to see it paid for, we want to see the injured worker looked after and we want to see the costs charged to where they should realistically be. It boils down to taking a closer look at a more active claims management, and that would be a side effect. We do not necessarily want to see it all charged to the successor employer, but we would like to see it allocated on a realistic basis. Whether the claim should even be approved should also be looked at on a realistic basis. That is one of our main concerns.



Mr. Sweeney: I can only tell you, as one who has appeared before the appeal board of the WCB on numerous occasions, if you cannot medically document the connection with the original accident, forget it. I do not know whether any of you gentlemen have had the opportunity to do that.

Mr. Elgie: I have been there a time or two.

Mr. Sweeney: I do it on a fairly regular basis with my constituents. I know you do not win an appeal if you cannot medically document that relationship. I do not pretend to have any medical expertise at all, or to be able to make a judgement on the correctness or accuracy of that process, but you have to be able to do that.

This is my last question, which again is more for clarification than anything else. You seem to be fairly strongly opposed to the idea of supplements. I am sure you are aware that the central and major proposal of the Weiler report was a wage loss factor. That is not in the new legislation. The supplement, in fact, is the substitution for the wage loss proposal.

I think you would also agree this legislation is going to have to come up with some kind of a wage loss factor, whether you call it wage loss or supplement. I do not care what you call it, but we have to come up with something. That is the central core of everything this committee is dealing with. If you do not like the supplement idea, do you like the wage loss idea or do you have another proposal for us?

We are in a bit of a bind. We have to deal with it; we cannot ignore it. We were under the impression the supplement concept was more acceptable to more people than the wage loss concept, but from your perspective I get a very clear message that may not be so. Can you tell us your preference?

Mr. Baird: Mr. Sweeney, one of the problems we have in this area is trying to find the better avenue of approach. There are one or two, perhaps more, alternatives available.

Mr. Sweeney: As are we.

Mr. Baird: That is right. The whole area is very complex. A lot of data are needed to study that, but we have not been able to access ourselves to that at this point. Those would be the claims themselves. What I suggest we could do is take this under advisement at our next meeting, which will be held fairly shortly. We will have this topic on the agenda and come to you with a more formal, clarified position than evidently was in the brief regarding it.

11:20 a.m.

Mr. Sweeney: I, for one, and I suspect most of my colleagues in this committee, would appreciate some suggestions from you. The injured person who represents the greatest need, in our minds, is the one who is partially but permanently injured. More often than not, he has to go back to work at a lower-paying



job. Some compensation has to be made there. Whether it is wage loss or supplement, whatever it is, it is an issue that must be dealt with; if you can help us we would appreciate it.

Mr. Lupusella: I have a few questions for the delegation. Let me state, getting back to the content of your presentation, that from an injured worker's point of view there is no balance in the tone of your presentation. That is why I am willing to raise a few questions, particularly in relation to the principle of improving WCB benefits.

It appears that there is a thematic line in the content of your presentation. You want to see the statute improved on behalf of injured workers, and you made particular reference to the severely injured workers; you also recognize that the present act is inefficient in addressing specific proposals on how to improve the benefits for severely injured workers.

I share this concern. I think the present act does not address itself to this particular problem. Actually, we are faced with injured workers who are living in poverty, and you do not want to see that. Before they were injured, they were extremely productive and were improving the wellbeing of the industries. But at a certain time, as a result of their injury, they were left with small pensions, and the level of benefits is too low.

How can you reconcile the principle of improving WCB benefits for the severely injured workers when on page 6 of your brief, you state that "the ceiling of \$31,000 being proposed by section 41, as amended by section 11 of Bill 101, is unacceptable in the current economic climate"? Why do you tie WCB, which is a structure that has to meet its obligation towards injured workers, to the economic climate?

I really do not understand the relationship. Even though I understand that you are paying the bill, why do we have to tie the WCB structure with the economic climate in Ontario when injured workers across the province gave up the right to sue employers as a result of injuries?

Mr. Baird: Mr. Lupusella, I think a couple of things have to be considered. The economic climate, or the ability to pay, is a very important issue. If the employers of this province do not have the ability to pay for the services or the benefits to the injured workers and the thing goes bankrupt or whatever, what happens in its place? Maybe it is an acceptable situation to say a piece of the pie is better than no pie at all.

I think what we are also trying to say in our brief is that the act and the benefit levels within the act in total have to be reviewed to ensure that there are not inequities in the act. As you indicated, severely injured workers who have been injured for quite a number of years had their original pensions set on wages earned at that time versus those workers who have received a modest or even a generous pension and have been able to go back to work at their former employment.

I guess what we are saying, as employers, is that there are

so many dollars to go into the financial pot of workers' compensation to satisfy the needs and requirements of injured workers, and we think the expenses coming out of that pot have to be realistic in terms of the needs, wants and desires of the injured worker.

Obviously, a worker injured with a broken wrist or whatever who receives a small pension and goes back to his regular job has had some pain and suffering, and he has had some time off because of the wrist, but he really has not lost anything as far as his earning capability is concerned--versus the worker who loses an arm or a leg. What he is looking at is going from being a bricklayer to a security guard with a great differential in pay.

We feel that those two areas have to be addressed rather than everything in the act being whitewashed so that when there is a five per cent increase, it goes across to everybody. In our view, that is what is putting the strain on the financial pot. Tying it to the economic times is trying to bring reality into being about what the people responsible for paying for the act itself can afford.

We have seen in one segment of our industry, in trucking, a major employer go bankrupt and we have seen the ripple effects of that bankruptcy not only through workers' compensation, but through wages to employees and everything else.

I would hate to see us get to the point in the workers' compensation area where it is truly jeopardizing employers' ability to stay in business and gainfully employ people. I think we have seen in other areas of government, because of the recession and the economic times, that it is a double dip. Employers are not employing many employees, so there is a drain on unemployment insurance. Those employees are not working and are not earning money, so they are not paying taxes and so there is less tax income from them. I think that is what our real concern is.

In these economic times, as you heard earlier with Mr. Sweeney's comments, there was an actuarial review done in--I will not call them the boom years, but certainly in better economic times in the late 1970s. With regard to the persistency rate, people were not on claim as long, there were more jobs available and they were able to get off workers' compensation and become gainfully employed. It all had an impact on the situation.

I would hate to think the government of the day would increase, or that this committee would recommend to the government of the day that it increase, the benefits to the degree that employers had to increase payments to the point where we lost some major employers as a result of their inability to pay. Everything we read today talks about competitiveness, productivity and things of that nature, competing in a world market.

As we all know, we are not necessarily a consuming country with the population we have and we rely a lot on exports. If we price ourselves out of those markets, albeit--and workers'

compensation is one of those areas--then there is going to be a pretty sad situation around not only for those employers, but for the injured workers, the elected representatives and the population at large.

Mr. Lupusella, I do not know if that has answered your question totally, but I am just trying to give you some flavour of what we are looking at.

Mr. Lupusella: Mr. Baird, I am sure you are answering the question and I appreciate your point of view. It appears that you recognize some problems when you come to the point of making a distinction between a broken wrist and an amputation. It appears that you know the kinds of problems injured workers are faced with.

The system, generally speaking, makes me extremely upset. The fact is that more or less there is no difference between an injured worker who is faced with an amputation of his leg and his arm and someone who has a broken wrist, because both of them are living in poverty if they are unable to go back to work.

I am going further to your particular position, because you stated that someone with a broken wrist might go back to work after six months with no loss of wage and so on. But there is also a danger that a person with an amputated arm or an amputated leg will never go back to work, and the present act will not relieve his pain, suffering and loss of wage.

There is a problem and it appears that the present act has been inadequate for 70 years in addressing these specific problems. You recognize the need of change.

11:30 a.m.

Leaving this element aside, you have been talking about accident prevention. The tone of your presentation, of course, has been talking about cost because it affects the employers across Ontario and with good reason. From your point of view, you are addressing this specific problem. Are you aware that the Ontario Industrial Accident Prevention Association is spending in the range of \$40 million a year? Perhaps you are not aware of that. The board gives money to the Industrial Accident Prevention Association of Ontario in the range of \$40 million.

Mr. Baird: Mr. Lupusella, are you referring to the various safety associations and their annual budgets under the board?

Mr. Lupusella: Yes.

Mr. Baird: I am aware of that, but I thought the number was more in the order of \$28 million.

Mr. Lupusella: I do not know. Maybe you can give us the correct figure.



Mr. Cain: I am really not sure what it is, Mr. Lupusella.

Mr. Lupusella: Okay. Let us take \$28 million.

Mr. Chairman: Excuse me. Is that for all the associations or just the--

Mr. Lupusella: The total budget. Through the years--

Hon. Mr. Ramsay: Excuse me, Mr. Chairman. I do not have the right figure either, but I think when you say the Industrial Accident Prevention Association, with respect, Mr. Lupusella, you should be referring to all of the safety associations. The IAPA is just one.

Mr. Lupusella: Is it just one?

Hon. Mr. Ramsay: It is just one association.

Mr. Lupusella: I am talking about the total budget given to the associations.

Interjection: All nine of them are--

Hon. Mr. Ramsay: I do not believe it is that high, but it does cover all nine. You referred to one only, and I would not want the record to--

Mr. Lupusella: Is it fair to say it is in the range of \$28 million?

Hon. Mr. Ramsay: Yes, for nine associations, not one.

Mr. Lupusella: For nine associations.

Mr. Baird: Mr. Lupusella, I have just been given a document which is the annual report of the board for 1983. For the nine safety associations, the expense was \$26,462,000.

Mr. Lupusella: Even though I understand the purpose of the nine associations and what they are trying to do with workers across Ontario, do you not think that some of this money should be spent to make sure the employers get some sort of education on how to cut accidents and to clean up their work place, to lower the cost of the premiums for employers across Ontario?

Mr. Baird: Mr. Lupusella, in this particular area the safety associations work with the employees and the employers as an assist in the whole area of accident prevention.

Mr. Lupusella: How can you justify that every year the number of accidents is increasing instead of being reduced with this cost tag of \$26 million being spent to sensitize workers and employers and to reduce the number of accidents across Ontario?

Mr. Baird: Mr. Lupusella, my understanding is that the accident frequency, which is the number of accidents per million man-hours worked, has remained relatively stable over the last



decade, and that while the number of accidents may have increased, perhaps the number of man-hours employed have increased as well. But the frequency rate, which is a rate that is used in the field of prevention, has remained relatively stable over that period of time, sir.

Mr. Lupusella: Again, being faced with 300,000 people being injured on the job--and I do not want to make clear distinctions if they are new claims or old claims being reopened on a yearly basis--this is a high number. If we are concerned about the cost affecting employers across Ontario, I think the best investment is to reduce the number of accidents. No employer appearing before us has been tackling the specific problem of how to reduce the number of accidents, which is the best investment for employers across the province.

Mr. Baird: We certainly have been doing that, Mr. Lupusella, in our involvement as employers with the various safety associations. In the trucking industry, as an example, we have been working very diligently with a core of owners in the trucking industry who represent a large population of workers on that very theme of accident prevention, reduction of accidents and things of that nature. We certainly agree with your position that accident prevention and the reduction of accidents is desirable for all participants.

Mr. Lupusella: My final question is in relation to the supplementary pensions. You maintain your position that you are against it, even though you stated to Mr. Sweeney that you are trying to find an answer to replace the issue of the principle of supplementary pensions. Why are you against it? Are you against it because of the costs or because you think the board might become a social benefit scheme?

Mr. Baird: Are you referring to subsection 43(5)? Which supplement are you referring to, Mr. Lupusella?

Mr. Lupusella: I am referring to supplementary pensions that are given to injured workers when a pension award has been granted to injured workers.

Mr. Baird: I believe that would be subsection 43(5).

In talking about the items of suitable and available work, I think our major concern is in the area of clause 41(1)(b), which tends to get into the unemployment insurance concept or the social net aspect of it. Under subsection 43(5), we said our concerns were that it created a discretionary power for the Workers' Compensation Board. In the context you mentioned it, I do not believe we are as adamantly against supplements in subsection 43(5) as we are in clause 41(1)(b).

Mr. Lupusella: You are right because there are specific cases such as the trucking industry that you mentioned where a driver has had a leg amputated, for example, and cannot be a driver any longer. Until he finds a suitable job, he needs some sort of assistance from the WCB, but we are talking about specific cases.

Even though you are not extremely against the general premise of supplementary pensions, I think you should accept the position that there are cases where this particular clause must be implemented to meet the needs of injured workers across Ontario.

Mr. Watson: I tend to agree with with some of the things, but there are others that I do not think are quite as black and white as you have made them.

One point I would like to deal with and question you about is spousal awards and your reasoning behind that. You are saying that it should be left the way it is and should cease on remarriage. That seems a little contrary to the point you made earlier that these benefits should not be social benefits.

My concern is, how do you justify this for the widow who remarries versus the one who lives common law, so that one collects and the other does not? How would you justify the situation for somebody who had an inheritance and had money to live on versus somebody who did not, or for somebody who won a lottery versus somebody who did not? Is there not a basic social injustice there that tends to work against honest people?

11:40 a.m.

Mr. Baird: I think what we looked at there, Mr. Watson, as I mentioned in my comments, were some of the methods by which these matters are handled in other jurisdictions, fatal accident awards in a court of law and everything else. I could turn the question around and ask why you think the benefits should be continued, but I am not so sure that would be fair.

We believe the whole principle of workers' compensation is that a surviving spouse, who has certainly lost the main wage earner in the family, should be compensated. By the same token, when that wage earner is replaced, if workers' compensation is continued, then a premium is being paid in that area. I do not have the answer for you, Mr. Watson, on the difference between living common law and being married. I am a country boy and I believe in getting married if you are going to get into those things. I cannot comment on the other aspects.

Mr. Watson: We will not get into who is a country boy and who is not a country boy on this.

Mr. Sweeney: Mr. Watson is from the big metropolis of Chatham.

Mr. Watson: I am not here to debate what is right or not right in society and those kinds of moral issues, but it bothers me that, if it is good enough to cut off the spousal award when the person remarries, it is not cut off when somebody else does not remarry--and I think people live that way. It is a basic problem in our social service system and one of the biggest problems. The boyfriend moves out the day somebody comes to check, because they take into account whether someone is living common law and cut off the allowance.

You are not suggesting that kind of policing action take place. If you were, you might have some justification, but then you would have to have justification for an overall support that involves workers' compensation as a kind of welfare system, which you say it should not be. I see you arguing against yourself on that issue.

Mr. Baird: I think Mr. Mandlowitz has a comment here.

Mr. Mandlowitz: The language of the bill has tried to hinge on to the definition of "spouse" that is in the Family Law Reform Act, and we are comfortable with that.

On the issue of such things as windfalls or lotteries and how they impact, I think the simple comment is that if all of us had won \$7 million, we would not be in this room today. That is not part of the central issue workers' compensation has to address.

If you look at the drafting of the definition of "spouse," I think it covers the concerns you are raising.

Mr. Watson: In what respect? Can you expand a bit?

Mr. Mandlowitz: I believe it hinges on a five-year period, which is a requirement, and then there is language that deals with "or" or "or" on page 3 of the bill, subsection 1(7). It says:

"'spouse' means either of a man and woman who, at the time of death of the one who was the worker, were cohabiting and,

"(i) were married to each other, or

"(ii) not being married, had cohabited with each other immediately preceding the death,

"(A) for a period of not less than five years, or

"(B) in a relationship of some permanence, where there is a child born of whom they are the natural parents."

I think that conforms with other legislation.

Mr. Watson: So you are happy with the definition of "spouse" as it exists.

Mr. Mandlowitz: I think it covers it.

Mr. Watson: It still seems to me you are a bit contradictory. You do not want to take that aspect of it and yet you take the windfall aspect of it. You are essentially saying that, as soon as people do not need that money any more because there is another source of support, they should not go to the workers' compensation for that support.

Mr. Mandlowitz: I am not seeking to be controversial, but perhaps the general question is whether workers' compensation



can be everything to everybody. I think one could make a historical case that when workers' compensation was conceived in 1915, we were not looking at a whole series of coverages which are out there now. Certainly, unemployment insurance was not providable in 1915, and it certainly was not kicking around in 1895 when the Americans began to introduce their federal workers' compensation approach.

There are programs that are administered by various levels of government which may have to be looked at in years to come to support the workers injured, or others, in various ways that have not been conceived to date. It just may be the case that if workers' compensation is to continue, we may have to look at alternatives very seriously. We may have to look at government funding. This is not to suggest that these are things the ECWC is putting forward today but merely as issues which might be considered in the decade ahead, because certainly the review will continue. Government participation might be an option. Employee participation might be an option. Private insurance coverage might be an option.

An interesting question, which is philosophical and practical at the same time, is, can workers' compensation continue or be asked in the future to provide increasing benefits on its own totally funded by employers?

Mr. Watson: In summary, I wonder if you have some middle ground in terms of the spousal awards and the length of time for which they might be allotted or something of that nature. Have you given that any thought?

I am a little uncomfortable with your position that because they are going to be remarried, you are going to cut them off. Could you not put something in there which says after a number of years, whether it be five, 10, or whatever it is? That is a debatable point, but I am a little uncomfortable with the discrimination you are suggesting here in terms of the surviving spouses.

Mr. Laughren: Mr. Chairman, two things make me feel a little more comfortable about the employers of Ontario today.

Mr. Chairman: Is that right? That surprises us.

Interjections.

Mr. Laughren: I cannot understand that.

One is the restatement of support for the concept of workers' compensation, despite the remarks just a moment ago on a different kind of way of paying it. But, basically, I think the ECWC agrees with that underlying principle that has been there since 1915. I think I read the ECWC correctly at this time.

Also, as a part of that, you want the system to remain fair for the injured workers, and you state quite clearly that you believe maintenance of income is a principle you maintain. You say: "Workers' compensation was intended to protect the earning



capacity of injured workers. The ECWC continues to actively support and endorse these principles."

I think I read that correctly. You are not saying that this should change and that injured workers should not be compensated for loss of income because of an injury on the job. I do not want to read into it anything more than what is here, but I believe that is correct. I do not think I am reading too much into that, but if I am please tell me.

That is the one thing that makes me feel more comfortable about employers. The only thing that bothers me a little bit--I will get to the second comfort index in a minute--is that you go on in your brief to talk about some of the things that bother you. I guess what you are really saying--once again, do not let me say anything that does not reflect your views--is that it is the abuses that bother you. You have no objection to workers being compensated for legitimate injuries on the job, but what bothers you is what you perceive to be abuses of that system.

Mr. Baird: That is correct.

Mr. Laughren: Therefore, it follows that most of the points you raise in your brief are made because you believe there are abuses flowing from the present system.

Mr. Baird: Not in all cases.

11:50 a.m.

Mr. Laughren: No, but basically that is what it is. I get the impression that what we are really talking about is a system of compensation that closes off what you would perceive to be abuses; that is one of the areas. It is not really a contradiction, but you are saying to us, "We do not object to compensating workers, but we think there are some abuses to it."

Mr. Baird: I think what we said, Mr. Laughren, was that we want a fair and affordable system and that we hope fairness means a pretty honest system in which people who have problems are looked after. I guess this fairness or this honesty depends on which side of the fence you might be on. If you are an injured worker, if you have hurt your back and it really hurts this morning, maybe it really hurts; and maybe there are people today who, rightly or wrongly, go to work every day with a lot of hurts because that is the system.

Mr. Laughren: But it bothers me when I see a contradiction such as with the ceiling on covered earnings. How do you stick to your principle of replacing lost earnings because of an injury at the same time as you put on an arbitrary ceiling that does not reflect the upper end of injured workers' incomes?

Mr. Baird: You will recall that we said "fair and affordable." It is great to say, "We would like to be everything to everybody," but there is a price attached to being everything to everybody.

Mr. Laughren: So you are compromising that principle.

Mr. Baird: What we are trying to explain to this committee is that if you want to be everything to everybody, then there are going to be a lot of employers out there who are not going to be able to afford to pay the bill. They are not going to be employers, there are not going to be workers employed and the domino effect will come into play.

Mr. Laughren: Right. Then what you are really saying is that you are prepared to compromise the replacement-of-income principle.

Mr. Baird: We are prepared to look at a system, as I said earlier, that is fair and that we can afford to pay for, unless someone else is going to come along and offer to pay for it or pick up part of it.

Mr. Laughren: Disillusion is setting in on me here. Here I was giving you credit for sticking to the principle of replacement of income.

I hope my second comfort area is not going to be destroyed as well. It had to do with Mr. Nixon's statement about working the unfunded liability down over a period of 30 years instead of a shorter period of 15 years or whatever. I was going to commend him. It is good to see at least the actuarial people tempering actuarial integrity with reason; that is a pleasant change. This was the second area that caused me some comfort in your presentation.

But I really am puzzled by this; I do not know how you can have it both ways. I do not know how you can say you want to replace income and be fair to workers and be concerned about abuses. Fine; I understand that. But it is not an abuse, surely, for a worker who is in construction, who is driving a transport truck, who is a miner or who is perhaps a bonus miner--I could bring in the bonus question or the overtime question, which you raised as well--if he gets injured and if he is at the top end of the scale--say he is getting \$35,000 or \$40,000 a year as a bonus miner or as a construction worker--to draw compensation benefits based on that higher ceiling. That is not an abuse, surely.

Mr. Baird: I do not think we are saying this is an abuse. We are saying we have a system in place that over the last decade has gone right out of sight with respect to what it is doing versus what it was meant to do and what it is costing to do it. So much of this material is with the board itself, and I would suggest to you that we have had good co-operation from the board in attempting to develop information and in trying to look at where the problem really is. I cannot lay a hard, cold fact on you today and say, "Abuse in the system accounts for X."

Mr. Laughren: No, that is very difficult.

Mr. Baird: But I think all of us in this room would be naïve and dishonest if we did not admit to ourselves that there is a lot of abuse in the system. There are people who are on benefits

longer than they should be because it is beneficial to them. They are making more money by being off than they would be if they went to work.

Mr. Laughren: How is that possible?

Mr. Baird: Depending on the work that is available versus the unemployment insurance situation, if he goes back to work and the job is not there, does he go on unemployment or does he stay with his weekly disability cheque, which is a tax-free situation? You all know there have been numerous articles written on that situation.

I hesitate to tell you unequivocally that there is all sorts of abuse in the system because I cannot substantiate that statement and I do not want to be dishonest before this group. It is my view, and it is the view of employers generally and I think a broader spectrum than that, that there are abuses in the system. Perhaps if we could come to grips with those abuses, there would be all sorts of money available to deal with those people who really need it.

Mr. Laughren: As someone whose constituency office is preoccupied between 70 and 80 per cent of the time with workers' compensation problems, I agree with you that there are abuses in the system. I am not sure we would agree about who is doing the abusing.

Mr. Sweeney talked about the actuarial question that Mr. Nixon responded to. I have the figures in front of me of the assessment that was imposed on employers to pay for the system since 1975. It is basically for a 10-year period, because we have the 1984 figures as well. Reading down, in 1975 it was \$1.45 per \$100 of payroll; in 1976, it was \$1.75; in 1977, it was \$1.92; in 1978, it was \$1.97. I would ask you to remember that figure, \$1.97 in 1978. In 1979, it dropped to \$1.80; in 1980, it dropped to \$1.62; in 1981, it went to \$1.66; in 1982, it was \$1.77; in 1983, \$1.84, which was still lower than it was back in 1977 and 1978. Then in 1984, this year, it is at \$2.17 per \$100 of payroll.

Despite the fact that I do not have the finely honed actuarial mind of Mr. Nixon, I had to take with a grain of salt his views on the unimportance of those assessment rates on the unfunded liability, keeping in mind that without exception, benefits were going up during those years. I do not have the percentage, but I would suspect, during those 10 years, benefit rates had to go up at least 50 per cent and probably more than that, while the assessment rates did not. In some cases, they went down.

Now the employers in the province are collectively raising an issue that borders on scare tactics. I do not like to use bad, tough language, but to be fair, you say there is danger of employers going out of business, causing unemployment. A big trucking firm went out of business. All that, in a funny kind of way, is implying compensation rates had something to do with that.

I find that a bit much given the ride employers had in the last 10 years in terms of those assessment rates. I find that



undermines what is basically a good brief you have presented. You state your case extremely well, and it bothers me that you would resort to that.

12 noon

Mr. Baird: One of the things you have to consider, Mr. Laughren, in reviewing those numbers from 1975 forward is that there is no weighted impact on the increased ceiling that went up on a continual basis. That average rate might have been minimally increasing, or in a couple of years downsizing, but in terms of dollars paid to the board in revenue income, if that ceiling has gone from \$14,000 at \$1.45 to \$25,500 at \$2.17, what I am saying to you is that those numbers in isolation are misleading as costs. You have to take it in consideration with the ceiling we have as well.

There is the example I gave you in the brief this morning that took a situation in trucking. Our rate for trucking, it could be said, is \$4.73. On \$25,500, that generated revenues to the board of \$1,206.15 per employee. That same rate could be \$4.73 or it could be \$3.80, but if it is on a ceiling at \$31,500, the cost to the employer is the same or even higher than it was on the old rate.

What I am suggesting to you is that you have to look at those average rates in relationship to the ceiling that was in effect at those times. While those rates may reflect a moderate position, if you go back and look at 1975--and I am certainly no expert in this field either--the ceiling might have been \$12,000.

I am not disputing what you are saying, but I am suggesting you should take that into consideration with the ceiling to look at what revenues were generated as well.

I am going from memory now, but from my experience in dealing with the board--and your question is better directed to the actuarial services at the board itself--I believe the reasons they looked at 1980, 1981, and even 1979 in effect, were that we were coming off more of an economic high and the persistency rate, the length of claims and everything else on that five-year moving average they use--and this is one of the disparities.

If you are using a five-year moving average and all five years are the worst you have ever seen, that is going to make a pretty bleak situation. In that five-year average, if you are coming off three economically good years, where the average duration of claims might have been 10 days instead of six weeks, it is going to distort those actuarial assumptions pretty dramatically.

Mr. Laughren: I agree with you that those actuarial remarks should be addressed to the board, and have been by members of this committee, but I think the employers too should appreciate those rates over the last 10 years and understand that when everything else was going up, they had no right to expect that the assessment rates would go down.



Mr. Baird: I am not so sure it is totally as you said.

Mr. Nixon: No, it is not.

Mr. Laughren: Why?

Mr. Nixon: Because the accident rates in fact were coming down through that period while the persistency rates were remaining relatively level. The payroll base was expanding, which puts the absolute dollars up.

Mr. Laughren: Yes.

Mr. Nixon: There was very little unfunded liability. The impact of paying off the unfunded liability was just a very small aspect of the total assessment rate up until about 1981 or 1982.

Mr. Laughren: Okay.

Mr. Nixon: Now that the accident rates have levelled off, they are not going down any more. They have levelled off and we still have the wage levels going up, which puts up the absolute dollars you pay; but the persistency rates, the average durations, have just fallen out of bed. That is what is causing the costs to go up unacceptably.

Mr. Laughren: Okay.

Mr. Nixon: How do you explain--and I mean any of you here--that more than \$100 million was paid in 1982 relative to what would have been paid in 1982 dollars and 1982 accident rates if the 1975 to 1979 persistency rates had existed? How do you explain that it takes that much longer for an injury to heal or there is that much greater chance of old injuries being reopened? How do you explain that? Do you not ask the question?

Mr. Laughren: Yes. As a matter of fact, probably the area I represent is a good example. I represent an area around Sudbury where in the last few years there have been very major economic dislocations resulting in massive unemployment. We noticed, and I think my constituency office is probably a good barometer of compensation problems--

Mr. Nixon: I will bet it is.

Mr. Laughren: Yes, it is. What happened was that in the boom years when a worker was injured the doctor said--and this is very common; these are not isolated examples--"You are not totally disabled any more. You are partially disabled and you could do light duty. You could do some light work." In years gone by that worker could take that modified-work slip from the doctor, go into his employer and say, "Here I am," and the employer would give that injured worker something to do, almost without exception. In the last five years, the injured worker who takes that slip in is sent back out again.

I am explaining to you how it happened. Now, you tell me what should happen to that worker, who is still not working

because of an injury on the job, plain and simple. If there are abuses, fine, I am not going to change your mind on that subject, I guess. Let us accept the fact that there is a worker who is totally legitimate. What are you saying should happen to that worker? That worker previously would have had a four-week claim, for example. Now it might be several months before he becomes totally fit again, and he may never become totally fit. Are you saying that is an abuse?

Mr. Nixon: Does it belong in workers' compensation?

Mr. Laughren: If he had not been injured, it would not be a problem.

Mr. Sweeney: It is still not an employment problem. It is an injury problem.

Mr. Laughren: It is an injury problem. If there were no injury, there would be no problem.

Mr. Nixon: Relative to other active workers, is he in the same position, or better or worse off than they are, if they have been laid off?

Mr. Laughren: He is worse off because he cannot work.

Mr. Sweeney: If he were fully physically healthy, there are several jobs he could do and the employer would be required to give them to him. Since he is only 50 per cent healthy, there are no jobs available for him.

Mr. Laughren: And he is 100 per cent income-injured.

Mr. Baird: Mr. Laughren, to address your question, and again we want to be very open, this is of concern to employers. There is a change from high economic periods when I will not say there was a lot of fat around, but it was a little easier than it is today. We have been through some pretty tough times. I think all of us, whether in business, in our own personal lives or whatever, have tightened the screws as tight as we can. We recognize that is an area we have to address. As we sit before you today, we do not have an answer to it. We have been reviewing whether we should be looking at rehiring our workers for some form of rehabilitation on the job.

You have to look at the situation in total perspective. We have a problem. The problem is not going to go away if we sit on either side of the fence and throw tomatoes at one another. Maybe one thing that has been missing in the process is that representatives of employers and representatives of employees should forget who they are representing and should sit down and try to find a solution to the problem, with our friends in the Legislature at hand to make sure we come up with a workable situation.

Do not forget for a moment that the business community, the province and, indeed, the world are changing pretty rapidly these days. Look at technological change. I am sure there are people

more enlightened than I am who knew five or seven years ago that robotics was going to come in and such things were going to happen. There are a lot of people like ourselves in the trucking business. We still use some pretty primitive forms of handling freight and driving trucks. We do not have modified work. A guy makes a pretty good dollar but he earns every dollar he makes, because it is hard and demanding work.

The point you raise is an issue with which all of us are going to have to come to grips. Unfortunately, we do not have magic today. We do not have the answer for you, but we have been considering and reviewing as an employer group what to do with the employee who has a problem.

Mr. Laughren: That is really all we are here to talk about. I am not here to talk about a person who might abuse the system. I am here to talk about improving workers' compensation in Ontario. You do not build a model for the aberrations or the blips on the scope. You build a model that is going to work. That is true whether it is a prototype for an automobile or a compensation system, and it is what bothers me about what is running through your report.

12:10 p.m.

I am wondering whether you are abandoning the very principles with which you start off your report. I was not trying to be facetious when I started out. You still believe in replacement of income for people injured on the job, but you chip away at it throughout your report. That is what is bothering me about your report. If you want to say, "We believe these abuses must be eliminated in the following way," that is fine, but what you are doing is chipping away at what even you agree are legitimate problems of injured workers. I do not want to be unfair to you, but we are having a frank discussion this morning.

You are chipping away at the person at the high end of the scale, to use one example. In the example I used, you are chipping away at the person who has refused any kind of modified work or light duty, and that bothers me. I do not think you want to do that, given what you state at the beginning of your report.

Mr. Baird: Mr. Laughren, even though we are in tough economic times, I think in the area you come from the miners must earn a pretty good wage. The information I have seen indicated that the ceiling of \$25,500 covered about 75 per cent of the workers, and when it goes up to \$26,800 it covers about 80 per cent of the workers.

Mr. Laughren: Not bonus miners.

Mr. Baird: No. When you talk about designing a model, I do not think you design a Cadillac if you cannot afford it. You cannot design something that is going to look after everybody, including the upper 15 per cent. Perhaps part of the reason for their wages and salaries in some of these high earnings positions is what the job is all about. When people take employment in those jobs, they know there is a certain amount of risk and an element of risk.



Mr. Laughren: So does the employer; the employers know there are high compensation costs.

Mr. Baird: Let me restate the position. We do not think we are doing what you say we are doing. We think we are trying to support what is fair and, do not forget, affordable. There has to be a period for some adjustments to be made on everybody's part to take care of the changing environment in which we are living. If somebody wants to come along, wave a magic wand and say it is going to be \$31,500, \$40,000 or whatever, you might have to wave the same magic wand to find out who is going to pay for it. That is all we are saying.

Mr. Chairman: We have a couple more questions, but before doing so I will ask the minister, who has to excuse himself, whether he wants to comment.

Hon. Mr. Ramsay: Mr. Chairman, I want to apologize for leaving early and in the middle of these discussions, which have been excellent this morning, but I have to go elsewhere on behalf of workers' compensation. I am attending a meeting in Halifax of ministers responsible for workers' compensation that will be held, beginning this evening, through to Friday. I expect to have some interesting discussions there.

Incidentally, I could not help but pick up on one comment Mr. Baird made and perhaps I can say something just before I leave. He talked about workers, employers, the Workers' Compensation Board and the government getting together to discuss these matters. I totally agree with that and I think everybody in this room totally agrees with it. That is what I hope the corporate board will do. I am placing a lot of advanced faith in how that board will function, and that is exactly how I trust it will function. It will be an opportunity for workers, employers, the WCB and the government to work together to resolve these problems.

Mr. Haggerty: Mr. Chairman, some questions have been asked by other members, but I am concerned about page 3 of the brief this morning. One minute you talk about protecting the earning capacity of injured workers and then you go on to say at the bottom, "...there may be a need for increased access to income support, the association is concerned that workers' compensation has become a social net, taking on more than its fair share of social responsibility."

I listened to some of the questions and responses. You are telling me that you are taking on what is more of a social issue than anything with respect to injured workers. As I look at that sentence, it would be pretty difficult for me to go back and sell that statement to the Niagara region where they claim now that they are picking up the social responsibility of the Workers' Compensation Board. Many injured workers are now facing going on general welfare to supply sufficient income--if you can call it sufficient even on social welfare--for their families. It is rather difficult to accept that paragraph.

You are talking about a depressed economy. Sure, when you



look at the overall picture of persons employed in Ontario compared to what it was seven or eight years ago, I suppose you would have more persons employed and more income coming into the industry, and you could perhaps well afford an increase in workers' compensation assessment charges.

Has your association done any studies on the fact that much of our industry in Ontario may consist of branch plants? In good times, foreign plants open up here in Ontario; then when things get a bit tough, they pick up and leave.

I suppose I could run a scenario with market value assessment, for example. The municipalities may accept that section of the Assessment Act and say, "Yes, we want reassessment on an industrial-commercial assessment." Then when you have a downturn in the economy, you have many plants that are not operating any more and have closed their doors and left the municipalities.

We find now in the scenario of market value assessment that they take the total numbers, use them as a guideline and say, "We have to make up for the industry that has gone and relocated someplace else, so we will use the total numbers." This means the well-established industries there pay more.

Is this the same effect we have when industries leave this province, that the older industries now have to pick up an additional cost related to the number of injuries? I think of it as being a second-injury fund that may be charged back to the general assessment over the whole compensation assessment. I feel present industries have to pick up that loss of source of income. Is this true? Have you done a study on this particular area?

Mr. Mandlowitz: We have not done a study of it, but you are into areas we are aware of and concerned about. We are looking, for example, at the responsibilities that fall on a rate group because of a defunct company, because of a business cut, and there is no question that there will be a spreadover to the rest of the industries in the event of that.

Mr. Haggerty: Are there any areas where we can put a safety valve in the Workers' Compensation Act so that when a firm pulls out of the country, leaves the province and goes back to the United States or some other place, there should be a certain charge or assessment; it cannot just walk off and leave the rest of the industry to bear the costs of the injured workers' assessment and related costs? Have you given any consideration to this area?

Mr. Sweeney: Especially where there are long-term residual costs, let us say, as in an asbestos company.

Mr. Nixon: Any company, really, with open claims--and every company has open claims. We talked about it in the context of experience rating. Up until now you really do not have the mechanism there to define how much you would want to charge them; but once you get into experience rating, which some industries are getting into, there will be greater facility actually to calculate

how much you would want to charge.

I would suggest that until now nobody wanted to contemplate the problem, because you could not calculate how much to charge them anyway. In other words, until now there was never any thought of designing reserves for a lot of the open benefits other than the capitalized values of pensions. But that thought has come up in the experience rating.

Mr. Haggerty: If I can get the chairman's attention, has anybody in workers' compensation in the Ministry of Labour come up with a study in this area?

Mr. Chairman: Mr. Cain is on the board. Have you any thoughts on this?

Mr. Cain: I would be happy to check with our finance department and provide you with any information I can on the matter.

Mr. Elgie: In the construction sector, that is one area we are vitally concerned with because there tends to be a high turnover of companies that are in and out of business. As the economy goes and as a new project goes, a new company starts and then it folds at the end of the project. That is a vital concern to the construction sector and we will be addressing it a little more fully in our presentation down the road. We look forward to working with the board to try to find a solution to that problem.

12:20 p.m.

Mr. Haggerty: Particularly in construction, you can have one person running the industry, but he farms all the jobs out to subcontractors.

Mr. Elgie: That is right. We are very concerned with that issue.

Mr. Haggerty: The subcontractor is the one who has to pick up all the charges. You can have huge profits made at the front, but he pays nothing.

Mr. Elgie: We have just now started to address that problem. We will be working with the board on that problem and look forward to future discussions.

Mr. Haggerty: Without taking too much of the committee's time, I would suggest that is another area where there may be additional revenue without increasing the older, well-established industries.

Mr. Chairman: We can try to get those figures before these hearings are finished.

Mr. Baird: I think it is a point well taken.

Mr. Lane: Mr. Chairman, a number of the things I was concerned about have already been addressed by various speakers.

At the bottom of page 3, you are talking about compensation becoming a social net and that you taking more than a fair share of social responsibility. I assume the economy has something to do with that? I take it you are suggesting the recession or the present economy--

Mr. Baird: Yes. It has a direct effect on the persistency rate, which is the length of claim involved.

Mr. Lane: I do not think you mentioned it in the brief, but you did refer to experience rating recently in dialogue with other members. I personally feel it would be to the advantage of the worker and the employer if, in the real sense, we had experience rating. We have it in as much as various professions are charged different rates, but we do not seem to be getting around to addressing the situation as far as some employers putting in a lot of safety equipment, training people and so forth so there will not be any accidents, who are stuck with the same rate as somebody else in the same business, even though that person is not particularly interested in safety.

Mr. Baird: Mr. Lane, in that area, one of our groups of employers, the Council of Ontario Contractors Associations group--and I will let Murray speak to that in just a moment--have gotten into a very aggressive experience rating program. The forest industries group Mr. Nixon referred to has been working with the board and others to develop an experience-rated program. As the employers' council, we have representation now on a committee working in unison with the actuaries in the board, outside actuaries and business, trying to come up with an experience-rating program.

Mr. Lane: But we are not addressing that in Bill 101.

Mr. Baird: No.

Mr. Lane: It bothers me a little bit that we are not. This is what I am saying.

Mr. Baird: Oh, I see.

Mr. Lane: I just wondered what your attitude towards it was.

Mr. Baird: We are working along those lines to get something in. Maybe Murray Elgie could just take a moment on the construction.

Mr. Elgie: In the construction sector there are 11 rate groups, I believe. We have an experience-rating plan in place for the construction industry. It is on a two-year trial period right now. As mentioned, it is quite aggressive. We can obtain up to a 30 per cent rebate for a good employer, which rewards the exact things you are talking about there, a good safety record, putting in the appropriate safety measures and so on. There is also the stick approach where there is a significant surcharge for the bad employers.



In effect, what we are doing is trying to make it a user-pay system. We feel that is going to have a definite impact on safety and hopefully the prevention of accidents in the system. We are optimistic that is going to have a good impact on the overall system.

As I say, this is the first year of a two-year trial period. At the end of two years, we will assess it and see how effective it has been or if we can change it in any way to make it better.

Mr. Lane: I hope it works out well.

Mr. Elgie: This is a plan that was proposed and put together by the construction industry in co-operation with the Workers' Compensation Board. In effect, it is an industry plan. We feel we have taken the initiative to try to improve the situation. We have had excellent co-operation from the board and everybody involved.

Mr. Lane: I just hope it works out well. I think it is far better if an accident never happens at all. If we can get employers to be conscious of that and have a good educational program at the work place, then--

Mr. Elgie: That is our sentiment exactly.

Mr. Baird: One of the things there with this is that it is taking a little while to develop because there are so many complexities in the allowable claims or the claims experienced against an employer. As you heard this morning, there are second injury fund problems, previous accidents, things of that nature. A lot of time and effort is spent on trying to come up with something that is workable and will do what it is supposed to do, and that is to get the attention of everybody towards the potential benefits if the system works well.

As you have indicated, if employer A goes out and does an excellent job, employer B says, "It is going to cost me the same as A, plus or minus a few per cent, so why do I care?" Hopefully, it will take that away and put the initiative back in the work place with the employer and the employee.

Mr. Lane: I hope so too. The other thing I do not think you mentioned this morning, and I have had some concern about it and we have had some discussion here on it, is how long the injured worker should have the opportunity to come back to his or her present job after being injured.

We all know there are two sides to every claim and sometimes three sides. In many cases, however, if an injured worker is going to be away a year or two and the employer hires somebody who does an exceptionally fine job in that department, it seems a little bit rugged to have to say 15 months later or whatever, "Sorry, buddy, but the former employee is now able to come back, so you are no longer with us." What is your feeling on that? What should be the time frame there? How should that be handled, or have you thought about it?



Mr. Baird: I think one of the problems, particularly asking an employers' group, is that the various participants in the group all have different feelings and ramifications based on size of business, whether it is a union shop or a nonunion shop and what the relationship is.

In my own particular company, we are a union shop affiliated with the Teamsters Union and there is a particular clause in our collective agreement that protects the employee if he is away from the job for a bona fide accident or sickness. The only criterion is that he has to pass the medical requirement to be able to come back to work. In our company or in our field of endeavour, based on that collective agreement, provided he is injured, it is legitimate, he is rehabilitated and is fit to come back to work, he does not lose anything. He comes right back to his job, provided the seniority brings him back to the work place and there is work available.

If we go across the broad spectrum of industry in Ontario, I do not think we have an answer for you this morning about what our feeling would be vis-à-vis should the person even be allowed to come back, or if he should, should it be a week, five weeks, a year or two years. I appreciate your question, but I just do not believe we are in a position to answer a question like that.

Mr. Lane: I am not particularly concerned about the week, five weeks or some period of short time, but where a small company with a vacancy because of that injury gets a young person in there who does an exceptionally fine job, there just seems something wrong somehow if the company has to let him go down the way someplace because somebody who is maybe not quite as able comes back and takes over the job he had before. I just wondered what your feeling was on that.

Mr. Baird: I think Jason may have a comment for you as well. He is involved with the small business enterprises in the province.

Mr. Mandlowitz: In one of the documents we are leaving behind, I would address you to page 15 of the submission called A Fair and Affordable System, which does explore precisely the issue you are raising. It does not answer your question, but it does try to respond to three recommendations which were in the white paper, to point out some of the difficulties that exist with smaller employers who are, I would think, more captured by the situation you are outlining than larger ones.

Mr. Lane: Moving on to page 11--and Mr. Watson dealt with this at some length--you say benefits should cease on the remarriage of the surviving spouse. Apart from that, Mr. Cain, you allow for a lump sum of two years or something. Is that not right?

12:30 p.m.

Mr. Cain: That is correct. On remarriage or cohabitation, the spouse is entitled to a two-year lump sum, at which point the pension is stopped.

Mr. Lane: Okay. You are saying basically to carry on with the old system and leave it like that rather than--

Mr. Baird: That is what we said in the brief, yes.

Mr. Lane: I think Mr. Watson brought up some of the other related problems that would probably flow from there, but I guess that is not really our problem.

Going to page 12, you say "although one-time payments of small permanent partial disability cases violate the loss of income principle" and so on, and then on page 13, "However, about 24 months from the date of injury the responsibility of the board to the injured worker would cease." Could you elaborate on that? It upsets me a bit.

Mr. Mandlowitz: Mr. Lane, what we are doing in that section is proposing a possible approach as an alternative to what is in place. We are suggesting taking the current system and refining it a bit by moving up the 10 per cent threshold. We do not give a number, but we ask the board to look at that. In order to provide a lump sum to individuals, if appropriate, and in order to try to put a time limit on that, we suggest 24 months from the date of injury, knowing full well that is not going to cover, or is not intended to cover, every situation.

The purpose is to try to provide a lump sum, medical rehabilitation and retraining, not necessarily to put the board in a position of finding employment, but of putting its services at the disposition of the injured worker who would in this plan receive a lump sum. In order to deal with those who would not be captured fairly by 24 months, there would, of course, be an appeals approach so the board would be able to rule on that in their own way. This is intended as an alternative approach to consider.

Mr. Chairman: Those are all the questioners except for Mr. Sweeney.

Mr. Sweeney: I have one clarification. On page 8 of your brief you make this statement, "The approach used by Saskatchewan to define 'suitable occupation' appears to have considerable merit." I have the Saskatchewan interpretation in front of me. Am I to assume from your statement you are prepared to accept the Saskatchewan definition? I am looking at page 8 of your report and you are dealing with the whole question of supplement. You would accept that?

Mr. Nixon: That was the intention, yes.

Mr. Sweeney: I am looking at our report which, in fact, accepts almost word for word the Saskatchewan one. I do not know whether you had a chance to read that, but I understand you are saying you approve of that.

Mr. Nixon: Yes.

Mr. Mandlowitz: We have extracted the excerpt that comes out of the appendix of the report. That is what we were looking at.

Mr. Sweeney: I would point out to you that the fourth part of the Saskatchewan description is "an occupation which does not place unrealistic demands on the worker," and it goes on to say, "The latter may take into consideration the workers' age, geographical location, education, training, language skills and ethnic background." You accept that?

Mr. Mandlowitz: Yes.

Mr. Sweeney: Okay. That is all I wanted to know.

Mr. Laughren: Mr. Chairman, before the witnesses leave, I wonder if I could ask Mr. Nixon the question I always feel compelled to ask actuaries, that is, the definition of an "actuary." This does not apply to you, of course, but more generally, it is said an actuary is an accountant without a sense of humour.

Mr. Nixon: I did not have the personality to be an accountant.

Mr. Chairman: I wish to thank the delegation very much for appearing before us. You have been extremely helpful to the committee and we look forward to rewriting our clause-by-clause description dealing with this in September. Your thoughts will certainly be taken into consideration.

Mr. Baird: Thank you, Mr. Chairman. We appreciate it.

Mr. Chairman: For the committee members, we will be back at two o'clock.

The committee recessed at 12:36 p.m.

CADAN

X013

-578

R-37

Government  
Publications

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, JULY 24, 1984

Afternoon sitting





## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)

VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Havrot, E. M. (Timiskaming PC)

Lane, J. G. (Algoma-Manitoulin PC)

Laughren, F. (Nickel Belt NDP)

Lupusella, A. (Dovercourt NDP)

Mancini, R. (Essex South L)

McNeil, R. K. (Elgin PC)

Riddell, J. K. (Huron-Middlesex L)

Sweeney, J. (Kitchener-Wilmot L)

Watson, A. N. (Chatham-Kent PC)

Yakabuski, P. J. (Renfrew South PC)

Substitution:

Haggerty, R. (Erie L) for Mr. Riddell

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister of  
Labour (Brantford PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Witnesses:

From the Confederation of Canadian Unions:

Dorfman, P., Chairperson, Ontario Council

Lang, J., Executive Secretary

Ritchie, L., Vice-Chairperson, Ontario Council

Newnouse, G., Member, Law Union of Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, July 24, 1984

The committee resumed at 2:07 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Haggerty: What are the exhibit numbers?

Mr. Chairman: We have to get up to date on numbers, Ray.

Mr. Haggerty: It is going to get technical.

Mr. Chairman: You file by number, do you?

Mr. Haggerty: Normally when you present something like that in a committee you have an exhibit--

Mr. Chairman: We have exhibits come in and then other ones later. I do not know. The clerk will have to give us a list of exhibit numbers at some point.

We have two delegations to appear before us this afternoon. The first one is the Confederation of Canadian Unions. In view of the fact that we have about two and a half hours to hear the two delegations, would it be acceptable if we split the time in two? It does not matter to me; it is only a suggestion. Because there are only two delegations, we do not really have to stick to our three quarters of an hour per group. That would be about an hour and 15 minutes apiece.

If the delegation would like to introduce themselves, then away we go.

ONTARIO COUNCIL OF THE CONFEDERATION OF CANADIAN UNIONS

Mr. Dorfman: Mr. Chairman, my name is Peter Dorfman, and I am the chairperson of the Ontario council of the Confederation of Canadian Unions. On my left is Laurell Ritchie, who is the vice-chairperson; and on my right is John Lang, who is the secretary-treasurer of the Confederation of Canadian Unions.

Mr. Chairman: We have your submission here, so you may begin any time you are ready.

Mr. Dorfman: The Ontario council of the Confederation of Canadian Unions appreciates the opportunity to address your committee. We have participated in the review of the workers' compensation system since Labour Minister Robert Elgie promised a better deal for injured workers in 1979 and appointed Professor Paul Weiler to study the issue.

The Ontario council was very relieved to read that your committee did not eliminate permanent disability pensions and adopt the so-called actual wage loss proposals. Furthermore, the amendments to the act contain some small but positive changes that will satisfy certain concerns of injured workers.

The changes to the act, however, will not offset the criticism of the workers' compensation system or relieve the suffering of the majority of injured workers. The issues that generate the most outrage have not been dealt with by your committee. Injured workers will still have to hold yearly demonstrations in front of Queen's Park before a cost-of-living adjustment is granted.

Even though your committee recommended a limited right to reinstatement with the accident employer, it can still be said that in Ontario injured workers can lose jobs because of an accident at work. It defies logic why an injured worker should be paid 10 per cent less while he is injured than he would have earned while at work. The workers' compensation system is still cheap insurance for employers.

Aside from these serious omissions, the most negative aspect of Bill 101 is the integration of Canada pension plan disability benefits with Workers' Compensation Board benefits. We urge the committee to recognize that many injured workers depend on the combination of the two to maintain a decent standard of living. If board payments and programs were sufficient, most injured workers would not be concerned about the CPP offset.

I would add that we are concerned about the lesser benefits that survivors get under the old system as opposed to the new. Our concerns about the act, the board and our suggestions for changes are laid out in greater depth in our previous presentations. We have reviewed the comprehensive presentation of the Association of Injured Workers' Groups and we endorse its proposals.

Our relief over the retention of the permanent disability system and the dropping of the actual wage loss proposal is tempered by our concern over the impact of the board's unfunded liability. You gentlemen heard a lot about that this morning. Admittedly, the size of the liability is large, but it should be seen as an indication of the safety crisis in the work place, not of the burden it could give to employers.

The unfunded liability grew so large because of the decision to reduce gradually assessments in the late 1970s. By 1983, the payroll-weighted average assessment rate was still less than the 1978 level. Had the rate been increased gradually instead of reduced gradually, and had the costs been projected in line with the cost-of-living increases, the unfunded liability would not be the issue employers made of it this morning.

In spite of its size, the unfunded liability represents payments that were legitimate and made on behalf of employers. Employers were able to save money when payroll assessments were reduced in the late 1970s. Now that the costs have risen, they will just have to absorb the increase. If there were no

compensation board, if there had been no 1915 tradeoff, the courts would be deciding the amount of damages for work-place accidents. The awards would be far higher than current compensation benefits and would take no account of the employer's ability to pay.

The severity and number of work-place accidents is largely related to the quality of working conditions. If conditions improve, so will the accident rate. In our bargaining units, we have already begun to see the impact of employers' panic over any increased costs. Instead of attempting to increase safety in the work place, many employers are trying to intimidate workers to prevent them from claiming compensation.

One employer suggested in contract negotiations that a worker who had more than two lost-time accidents would be limited to returning to the lowest classification, which would mean the lowest rate of pay. This same employer, who was just double-assessed, now routinely assembles all the members of the family who own the business to interview any one of their 250 workers who makes a claim for compensation. This family normally just runs the office and, until this new routine, hardly even entered the factory, never mind taking the time to talk to its workers.

Other employers prefer to pay a small late reporting fine rather than send accident reports to the board in a timely fashion. Some employers are questioning almost every accident and thereby causing costly on-site investigations by board officials. We note that psychological benefits are not as readily available as they used to be and rehab services appear to be experiencing a cutback. We urge the committee to adopt provisions similar to those in section 24 of the Occupational Health and Safety Act which protect workers from reprisals. In this case, they would protect workers who claim compensation from reprisals.

Injured workers are unable to compete successfully with healthy workers in a job market with 12 per cent unemployment. We urge the committee to recognize the need for special measures to get injured workers back to work. Employers should be obliged to rehire and retrain those who were injured in their work places. Many work places are going through a period of rationalization and technological changes. This is eliminating a lot of heavy manual labour and creating opportunities for the kind of work that is within the capabilities of many injured workers. Compensation board costs would be reduced considerably if the onus were on the accident employer to rehire injured workers instead of abandoning them.

The act should be set up in such a way that it provides employers with more encouragement and support for improving work-place safety. Most employers lack this expertise. The Industrial Accident Prevention Association, and we include in this the other safety associations mandated to play this role, has not been very effective. Liaison should be set up with the Ministry of Labour so accidents are followed up by inspections to ensure that the causes of accidents are eliminated.

We have been very impressed by the work of the Canadian Centre for Occupational Health and Safety in Hamilton. This committee should make such services more broadly available.



On June 1, 1984, the Minister of Labour Ramsay told more than 1,000 workers who were demonstrating here at the Legislature that he hoped every June 1 would be Injured Workers' Day. We hope there is no need for a regular Injured Workers' Day. The ball is in your hands.

Mr. Chairman: Thank you very much for the presentation.

Mr. Laughren: Mr. Chairman, I am not up to date on this organization. Roughly how many--

Mr. Dorfman: We represent about 7,000 workers, ranging from the textile industry to the furniture industry, bricklayers, operating engineers, communications workers, miners, mine mill--it is a real mix.

Mr. Laughren: Did not mine mill (inaudible)

Mr. Dorfman: Yes.

Mr. Laughren: I remember that.

Mr. Chairman: Mr. Laughren, for the purpose of Hansard, would you move forward slightly, please. I am sure you want your remarks recorded.

Mr. Laughren: Now you have me intimidated. Sorry, I am not used to public speaking.

I wonder if you can bring me up to date on page 3 of your brief, in the middle of the page. "We urge the committee to adopt provisions similar to those in the Occupational Health and Safety Act (section 24)." What is that? I guess I knew at one time.

Mr. Dorfman: It gives people recourse to the Ontario Labour Relations Board if they feel they have been harassed or put in a position whereby there is a reprisal against them for their use of the act.

There is nothing in the Workers' Compensation Act, by our reading, that gives people any kind of protection so that if they feel in their working conditions there is some harassment that is going on as a result of claiming compensation, they have no protection.

Take this example we gave you of this business, which is a fair-sized one and a not unsophisticated employer. It is in such a panic about its double assessment that whenever anyone has a claim that he is going on compensation, he is dragged into the boardroom and all the brothers and sisters who own the company sit down there and they say, "What is your problem?" The first time it happened the guy ended up saying: "I am better. It really was not there. I suddenly felt better." The big joke going on was that if that family could have that kind of impact on that fellow's arm problem, think of what they could do for cancer.

Basically what had happened was this guy went in with a problem and came out and did not have one. It was clear

intimidation, but he was too intimidated to complain. I could not, in all conscience, say to him there was a part of the act that protected him from that kind of harassment.

Mr. Laughren: This has been resolved now, has it?

Mr. Dorfman: It is in the process of being resolved. As a practice, it is ongoing. There used to be an accident investigation procedure which involved a safety committee. The company just did an end run around the safety committee in this particular factory, and this is the procedure now. It is the safety committee which everyone is talking about quitting because they are so frustrated.

Mr. Laughren: Does the CCU have a compensation committee or working group?

Mr. Dorfman: We have presented six or seven briefs on the issue; I cannot recall the number, but it goes back to 1979. We have been largely the group that has been dealing with the issue. You said this morning that a lot of your work is workers' compensation. I think we could say that our experience is much the same, that we spend a lot of time on workers' compensation; it is very contentious.

Ms. Ritchie: Now that the employers are engaged in many more appeals, even at the initial stages and even in cases that eventually succeed--that is, from our point of view, where the worker has received the appropriate compensation--the effect that is having is that a number of employees and other members of the union are sufficiently intimidated by that process and can view financial constraints that the argument then becomes, "Maybe we had better go on unemployment insurance," even though that is to their detriment.

They do not necessarily understand the implications of that, but the idea of a tug of war with the employer over a period is one that they are very afraid of and concerned about and it affects their relationships right on the shop floor with the forelady and so on, who all know what is going on in the front office. I would say that has been on the increase within the last six months. It has been absolutely noticeable and discernible. Dealing with workers' compensation has never been an easy thing, but there is a discernible change. I am sure that what I would call the employers' war council against workers' compensation, this new Employers' Council on Workers' Compensation, has been advising employers to take that course.

2:20 p.m.

Mr. Laughren: As a member, I have been dealing with compensation cases for more than a dozen years, and it seems like twice that long on this committee with redrafting legislation and so forth. This is the first time that I can recall an employers' council being established to deal with compensation.

I think the employers in the province are serving notice that they intend to pursue the cause of workers' compensation from

their viewpoint. I detect shades of British Columbia seeping into Ontario. I guess it depends which side you are on as to how you would do that, but I find it very disturbing.

Mr. Dorfman: From my point of view, I think the employers see an opening here, a way to cut costs: "The law is being changed. Let us organize and see if we can save some money." If it comes off the backs of injured workers, I do not think they really care; there is an opening for them to cut costs. It is rough times and everyone admits it. "Let us scrap this tradeoff of not giving people the right to sue any more. We will give them less than their half of the deal." If they can influence this committee, they will have gotten away with a heck of a lot.

Ms. Ritchie: It is really as if they have established a war council. There is going to be a war on workers' health and safety to pay off the debts from the last recession and to maintain whatever profit levels they have for the next one. It is very clear what is on the agenda.

Mr. Haggerty: On page 3, you said, "We urge the committee to adopt provisions similar to those in the Occupational Health and Safety Act, section 24, to protect workers who claim compensation from reprisals." You indicated that you thought there was a provision in a section of the Occupational Health and Safety Act that any grievances about that should be heard before the Ontario Labour Relations Board.

Do you think that is the answer to what you are looking for? Thirty per cent of working people today are unionized. Persons outside a union or an organized group have no right to a hearing before the Ontario Labour Relations Board. Are you aware that not everyone has that right?

Mr. Dorfman: The provisions of the Occupational Health and Safety Act apply to everybody, organized or unorganized, just as safety provisions apply to everybody. I am not aware of the legislation or the practice being such that recourse to the labour board on that issue is unavailable to unorganized workers. It is available to everybody.

The only point we are making here is that there is no protection whatsoever. If the Legislature, in its wisdom, decides that there has to be protection for the right to refuse and about reprisals over the right to refuse, there should be equal protection against reprisals when you claim the right to be injured. I think that is all fair. In logic, the right to be injured would probably precede the right to refuse.

Mr. Haggerty: You mentioned the number of accidents and the investigations that should be carried out by the Ministry of Labour. You have indicated that it is not carrying out its responsibilities in this area. Do you have any facts that you base your arguments on?

Mr. Dorfman: What we are really saying is that there should be an approach to accidents that attempts to look at them from the safety point of view. We do not deny that employers are



facing an increase in costs. There are various reasons. We may not agree as to how it happened, but obviously one cannot deny that they have a \$5-billion problem. If they can reduce accidents, they will reduce their costs. Those costs come from some place. They come from injured workers and crummy working conditions all across the province. If you improve the working conditions, the conditions that create the problem, you are not going to have to pay the money out because nobody is going to be injured. That may be a bit idealistic because you are always going to have certain kinds of accidents, but where is the focus on safety?

What we are attempting to do is to say there has to be a lot of work put into giving employers help and getting information out which encourages employers and employees to better the working conditions so they are safer and so we do not end up in this problem whereby there is a huge unfunded liability. The employer's response is, "We have to cut it down, we have to reduce our assessments, we have to cut this, cut that." Everyone ignores the issue of the fact that what is causing this is the fact that work places are so unsafe.

In Canada in 1982, 850 people died from work place related injuries and illnesses; 15 million working days were lost through injuries, the equivalent of 62,000 person-years, at a cost to the economy of \$10 billion. That is a federal figure. Look at the cost to the economy; it is astounding.

The approach of the employers, from their point of view, is obviously going to be very narrow, "We do not want to pay this amount." However, from our point of view, the issue is that people are getting hurt, they are getting permanently injured in their work situations and the focus has to be on improving the work place.

Mr. Haggerty: I think we can all agree with that principle. I was speaking this morning with the person representing the trucking industry, the chairperson this morning. I have dealt with a number of workers' compensation cases particularly concerning employees in the trucking industry and drivers of vehicles who have a number of back injuries and back complaints.

Take, for example, the cab-over-engine type of a tractor where they have about a half-inch rail or rod to even get into the cab. Under certain adverse weather conditions, these fellows take a lot of falls. There is poor construction of seats for them. If you buy a Cadillac, a Mack truck, you are going to get perhaps a first-class approach to safe driving in a sense, as compared to another vehicle that is thrown together as a commercial job, the cheapest thing they can put in there.

They probably should have some built-in safety factors. In some of the new industries we have today, the new machinery that is coming off the assembly lines, the built-in safety factors are probably being checked for safety more than has ever been done before. They say they can be run for 10 or 20 years, or something like that, and there may be only one accident on that machine, but we do not seem to be looking at that.



I think the area you are trying to drive home is that there should be more built-in safety measures.

Mr. Dorfman: It is a developing science, ergonomics, which attempts to engineer things in such a way that they do not create problems. It means eliminating noises. It means the Legislature sets up guidelines on noise. You can get all sorts of workers' compensation claims because of noise. The employers are going to be back here, they are going to be going nuts because of the costs. They are the ones who are creating all the claims because they are the ones who have such noisy work places.

Mr. Haggerty: They show no responsibility in this area.

Mr. Dorfman: No.

Mr. Haggerty: One of the reports showed that about half of the hearing aids that are supplied to reduce the noise level were not suitable for the industry and yet we have seen no improvement in that area. There are lots of areas where I would have to agree with you that work safety is the most important thing and that will reduce the number of injured workers' claims.

Mr. Dorfman: I think employers need help in this. It is not just a matter of saying, "Do it." Knowing employers that I know, I just cannot see that they have got the capacity to understand how to do some of these things and they need help.

Traditionally, that has been the role of the Industrial Accident Prevention Association. You cannot expect a doctor to be an architect and there has to be some sort of assistance for them. The IAPA just does not have that kind of expertise and something has to be done to give employers assistance.

Equally, injured workers are not getting a lot of information on what they need to know about their work places and what is going on in the work places. Safety committees cannot function properly unless the information is available, unless they get the expertise so that internal responsibility systems can work.

Mr. Haggerty: You mentioned the war council--I love that term--the employees' council. Do you feel this will have some adverse effect upon the average injured worker going before the board for an appeal?

2:30 p.m.

Mr. Dorfman: There is a developing layer of consultants at work on behalf of employers whose role is to do appeals on a cost-effective basis, and they appeal a lot of stuff left, right and crazy.

What we are finding, quite frankly, is that employers do not understand yet what the issues are in workers' compensation; they are just figuring it out. But in a few more months of the kind of organization we saw this morning they are going to have the system down pat.

Mr. Haggerty: You said you represent 7,000 injured workers. You are a group of what?

Mr. Dorfman: Not injured workers; workers.

Mr. Haggerty: Workers. I see.

Mr. Dorfman: We represent a group of unions that are Canadian unions as opposed to international American unions, in all sorts of fields: miners, furniture workers, textile workers, a lot of immigrant workers, operating engineers, bricklayers.

Mr. Haggerty: The point I am trying to make is that there are employees' councils, injured workers' councils and so on. The fact that now we are establishing two additional agencies out there would indicate to me that the act itself is not working. If it were working properly, we would not have the adversarial approach that is there now with the group of employees coming together to fight every appeal or every claim that comes before it.

You have the different associations of injured workers now; you have legal aid in Ontario, which is providing assistance to the injured workers; you have MPPs who look after them as their advocates too. If we are building up this type of confrontation, it surely indicates we have to take another look at this whole act and bring it down so that at least when we talk about a fair deal for the injured worker, a fair deal for the industry and so on, we do not arm one another with words, phrases and sections of the act that can be interpreted in so many areas so a person can be shortchanged.

I can think of one particular case where I made an appeal to the Workers' Compensation Board. There was an explosion on board a vessel on the Great Lakes. The second cook was using propane as a source of energy for cooking meals on board ship, and it exploded. The person is lucky to be alive today, but he has a severe back injury and he has had other problems as well. When he appeared before the board, the reason the industry gave for objecting to any settlement was that he looked too young to be put on pension.

That is the excuse they are using today. Who has the responsibility to look after this injured worker who was to be covered by compensation in case of an accident on board ship? He had to go on welfare. Now the company has appealed because it is not satisfied with the decision handed down in the appeals before the adjudicator, who awarded him a pension. It is a matter that will involve another three or four hours and preparing a case and so on.

I am going to direct a question to the ministry. In this appeal it was mentioned that the shipping industry had another fund available for persons injured on board ship. It was mentioned that it was buying through private insurance some place down in the Bahamas. It is a great place to hide from taxes, I suppose, if you are generating revenue here that (inaudible) some of these ships are registered offshore.

Mr. Laughren: Stop knocking your system, Ray.

Mr. Haggerty: No, I am looking for a fair system here, and I am saying there are some industries buying additional offshore compensation insurance for accidents. If that is the case, and in view of the representation made here this morning, it is misleading when they say the costs are so high they cannot afford it; in some cases they are buying offshore insurance.

Mr. Gillies: The question of the shipping industry came up last week, Mr. Haggerty. As I recall, the situation is that in ships that work in and around Ontario on a regular basis, any accidents that occur on board ship during a voyage are covered, regardless of whether the worker is actually working or is just on the ship.

There was a case that I think was subject to appeal discussed last week whereby, when the ship docks, if the worker leaves the ship and an accident occurs on drydock, on the gangway or something, then it is subject to interpretation and may not be covered. But during the period they are on ship, if they are in that classified group of employers that would be assessed, those persons are covered during the entire period they are on the ship.

Mr. Haggerty: My point is that they are buying additional compensation insurance, you might say, in case of an accident on board.

Mr. Gillies: I assume they would be schedule 2 employers, who are not assessed or may not be fully assessed.

Mr. Chairman: Perhaps Mr. Cain can better explain that.

Mr. Chairman: They are schedule 2 employers. This was explained to us last week; unfortunately, the member was not in the committee. Schedule 2 employers do buy their insurance separately; they pay into a fund, and they buy their insurance separately. It is over and above the board.

Interjection: They do not pay into the board.

Mr. Chairman: They do not pay into the board, no.

Mr. Villeneuve: It does not take credibility away from what we heard this morning at all. It has no bearing on what we heard this morning.

Mr. Haggerty: I was saying that because of the depressed state of the economy today, some industries that have located here in Ontario are packing up and leaving, going back to the United States or their mother country, although they have a responsibility here for injured persons.

A shipping company can buy some form of insurance to protect a person on board ship in the event of an accident. By registering that vessel, it can circumvent the laws in Ontario in the sense of saying, "I am not responsible for that." If you want to take them on and battle them down in the Bahamas or some place in the West Indies--



Mr. Gillies: Mr. Haggerty, I will ask Mr. Cain to elaborate on this, but the point is that even if it is a schedule 2 employer operating in our waters, regardless of whether it has private insurance or if it is under schedule 1 and paying WCB assessment, it has to pay out the same benefits and operate under the same rules as if it were under schedule 1. If it is a Bahamian ship and an injury occurs in the waters in our area, the workers are covered to the same extent as they would be under WCB.

Mr. Haggerty: These could be Canadian vessels registered in the Bahamas.

Mr. Gillies: Yes. Even if it is private insurance, though, they have to abide by our rules. Mr. Cain will elaborate on that.

Mr. Cain: Mr. Gillies is quite correct. Injured workers for either a schedule 2 employer or a schedule 1 employer are entitled to precisely the same benefits. It is true that the schedule 2 employer does not pay a regular yearly assessment to the board, but rather pays the funds as we require them. However, the effect on the injured employees is no different; they are entitled to the same benefits as employees injured under schedule 1. There is no difference whatsoever.

Mr. Haggerty: Federal law comes into this matter. I think anybody who works on board a vessel on the Great Lakes is covered by federal legislation. I think all the workers' compensation does is interpret the degree of disability.

Mr. Gillies: I think I am right in saying, though, that no worker operating in the waters surrounding our province should be adversely affected by the situation of the owner having private insurance, because they still have to abide by our rules.

Mr. Lupusella: We are looking for a fair system for the employer and the employee. I do not see any fuss being raised when automobile insurance companies increase their premiums to consumers. Now that we are supposed to improve the benefits for injured workers, employers are getting organized.

2:40 p.m.

Going back to the principle of your presentation, I share your concerns, because I think the theme of your presentation is based on how injured workers are treated under the present system. I do not think the new system will solve certain aspects of the problems that might arise.

On page 3 of your presentation you state that employers prefer to pay a small late reporting fine rather than send accident reports to the board in a timely fashion. That is true.

I agree with you there is some sort of harassment taking place towards the injured worker because, when the employer will not send in the accident report, the worker will not only not be paid, but there is an investigation initiated by the board. Based on my own experience, this investigation usually takes three or



four months to be finalized. That is what I do not understand, but I do understand why the board is delaying the process of the investigation over three or four months.

Going back to the principle of harassment, I believe that is what harassment means. Delaying the investigation and not finalizing the claim on behalf of injured workers, the result of the employer not filling out the accident report, gets the injured worker into a frustrating process because no money is coming in from different sources. He does not want to apply for unemployment insurance because his is not an unemployment insurance claim. In the meantime, he feels he must get WCB benefits. We are forcing the injured worker to apply for welfare until the investigation has taken place and return the money to the welfare department or family benefits.

I share your concern that there is a harassment process by the board in dealing with delays in filling out accident reports. Is the delay justified? Why does it take three or four months before the investigation is over. Why not investigate the claim as soon as possible? The only thing the investigator from the board has to do is contact the employer and get the information from the employer. He might stick to the principle that no accident took place, so the investigator has to talk to co-workers and the injured worker, get in touch with the family physician and get the information. Why is there a three-month or four-month delay before the investigation is over?

Mr. Gillies: Mr. Lupusella, could I speak briefly to the question of late reporting and then I will ask Mr. Cain to speak to the question of the investigation?

Mr. Lupusella: Yes.

Mr. Gillies: I think the point you have made is very legitimate. I am pleased to be able to tell you the board is moving in the direction of trying to eliminate these abuses.

Under the regulations to the current act, for delay in reporting an injury where there is a claim for medical aid only, the fine is on a scale between \$25 and \$250; where it is a compensation claim, it is between \$50 and \$250. You are quite right. I think the board has recognized that in some cases the employer is delaying the filing and quite gladly paying a fine of \$25 or \$50, which in some cases is no big deal, as opposed to filing the claim expeditiously.

What we are trying to do is set up a computer model, and Mr. Cain can speak to this. They are going to computerize the system at the board so that we can catch the people who are obviously consistently doing this in a way that would indicate they are trying to frustrate the rules or, as you used the word, harass the worker.

We do not want to penalize unduly the small businessman who may do it once simply because he does not understand the rules sufficiently or it is just a legitimate mistake. Under this computerized model, the people who are consistently filing late

could be called to account with the intent that they will increasingly be levied the high end of the fine as opposed to the low end. As that system comes on stream, we hope that will eliminate that problem.

In terms of the investigation process, I should ask Mr. Cain to speak on that.

Mr. Cain: In terms of investigations, the number of investigations we do and the type of claims we investigate, I do not believe there is any relation to late reporting by employers. That is another matter as Mr. Gillies described it.

Investigations usually take place only after we have tried by letter or phone call to resolve the situation, because obviously they are the quicker ways of doing it. That frequently takes two to three weeks at least. Once we realize that letters or phone calls just are not accomplishing the purpose of getting all the information, then I admit we have to investigate.

The investigation requires, as you said, that we have to see, depending on the situation, the injured worker, any witnesses, the employer, the doctor and so forth. An investigation can take anywhere from one week to about three weeks. In the long run it is possible we are talking in terms of a five-week delay. Many investigations occur much quicker than that, but they can run for five or six weeks, I agree.

Mr. Lupusella: More.

Ms. Ritchie: That is not what we are told. In practice, that is certainly not true and also in terms of what we are told by the ministry's own staff, it is not true. We are told that you can expect a delay because there is a backlog. That means the earliest is one month and the normal time span is two months.

There is another issue which should be injected. One of the issues we are raising here is not the simple historical investigation of accidents that has gone on over a period of time. We are also talking about the various procedures, doctors' reports, questioning of individuals and so on, that have resulted in benefits being paid to the employee or a decision to pay benefits to the employee. The decision has gone to the employer and the employers are now starting to say, "We want every single one of these investigated."

Mr. Cain: I will address both points.

First, when you talk of the length of time it takes to investigate, it is true that in some areas of the province it will take longer at any given moment in the year than in other areas. Yes, there may be two or three areas in the province where it is taking longer than four or five weeks.

But the other areas of the province are not taking longer. We have investigators in our all regional offices and our area offices. We have a listing every week telling us which areas are behind. Sometimes we see it three or four weeks behind and then

that area catches up because we move people in to resolve the problem. They are fine then for perhaps a year or more; then perhaps they will again go behind.

The other problem that you were addressing, which was--I am sorry?

Ms. Ritchie: The question now of a very discernible increase in employers calling for investigations.

Mr. Cain: At the Workers' Compensation Board we encourage employers to tell us on accident reports if they have any doubts about the accident--tell us about the accident and the facts, not their assumptions, that kind of thing. If we look at the accident report and feel it is necessary to contact the worker, we will do so by telephone, letter or an employee's accident report.

If we are still satisfied the accident is allowable, then we simply phone the employer and tell the employer we are going to allow the claim. We do so and the employer can appeal. I assure you that happens many times every week at the board.

We do not ever investigate a claim simply because the employer says, "I want it investigated." I guarantee--

Ms. Ritchie: That is absolutely wrong. We are speaking from our own experience in the day-to-day fashion. I deal with at least one workers' compensation claim, maybe a follow-up but at least one workers' compensation-related issue each day. I know from experience that in the past it is quite true that the board would investigate, make its inquiries and make a decision.

What is happening now is that the inquiries are made, a decision is made and then I get an apologetic adjudicator from the board calling and saying: "I am very sorry, but my supervisor has said that the employer is writing, calling and sending letters. We are going to have to call an investigation on this--and it is only because the employer has called for an investigation." That never used to happen.

Mr. Cain: Obviously, I do not wish to get in an argument with you. It is your perspective and I am just describing policy.

Mr. Chairman: Mr. Cain is here only to tell us about policy, and that can certainly be followed up on by the committee if there is a problem in this area.

Mr. Lupusella: Once again, Mr. Chairman, with the greatest respect to Doug, what he is missing is that six weeks more or less--and I disagree with that--is the length of the investigation. Then the investigator working for the board gives the contents of the investigation to the adjudication process of the board, which you are saying takes four or five weeks before final deliberation on the investigation will be released. That is when the injured worker is advised as to whether or not the claim has been accepted or rejected.



2:50 p.m.

Then you are talking about appeals and so on, which means that the injured worker is placed in a very unfortunate situation. He is really forced, if the claim is rejected, to go and apply for unemployment insurance, welfare or family benefits. Maybe the length of the investigation is in the range of four to six weeks and I disagree with that. You are not including the adjudication process until the decision has been rendered to the injured worker, which is in the range of another four or five weeks.

Mr. Chairman: If there is an unduly long process for particular claims, I suppose you should write to the minister or this committee and give us the claim numbers so they could be properly investigated.

Mr. Lupusella: The reason I am raising this issue is the fine, and that is why I agree with the delegation. If the fine for an employer who delays reporting an accident was higher than \$25 or \$100, or whatever it is going to be, that would be an indication that the employer would be forced to file the accident report even if he disagrees about the accident. Then we would leave it to the board to make at its discretion a decision as to whether the claim should be accepted or rejected.

We raised this issue before delivering our majority and dissenting reports. Employers should be fined if they do not meet their obligation to report accidents, as to whether the accidents took place and how they happened, even if they disagree that the accidents ever happened.

Going back to a different point, this morning we saw employers organizing themselves to respond to the immediate changes that this committee has undertaken as a result of Bill 101. In the long run, when the bill is in whatever form and shape it takes when the House reconvenes, I would not be surprised if the same organization hires, for example, three or four lawyers on behalf of all the employers participating on the council to fight injured workers' claims. I would not be surprised if they do that. They have the right to do so.

On page 3 of your presentation you talk about the Occupational Health and Safety Act. This committee had an opportunity to deal with different aspects of the act. I was of the impression, when the Occupational Health and Safety Act was enacted, that the legislation would greatly reduce the number of accidents in Ontario, but it appears that the act is not strongly implemented by the Ministry of Labour to make sure that accidents are reduced.

The best investment for employers is to eliminate accidents and clean up the work place. It appears that no one appearing before us delivered the specific message that it was imperative and important to clean up the work place to reduce the number of accidents and, therefore, reduce the cost of the premium. I do not know why they do not want to talk about the root of the problem and why they just address themselves to the overall situation of Bill 101 on how much it would cost them, and to nothing else.



You also mentioned in your presentation that the Industrial Accident Prevention Association, Ontario, which is mandated to play this role has not been very effective. I question the money the IAPAO is spending on accident prevention. What should it do? I understand that employers should be educated to clean up the work place. The Occupational Health and Safety Act has the specific mandate to make employers aware of these circumstances.

However, because of the Ministry of Labour involvement, it appears that the mandate does not come from the Occupational Health and Safety Act. We are dealing with \$28 million that the IAPAO and all the organizations involved in accident prevention are spending on a yearly basis.

You are telling us, and I share your concern, that their mandate is not effective. What should they do in order that the \$28-million price tag will be well spent, which might help the principle of reducing the number of accidents across the province?

Mr. Dorfman: I think we can probably divide this into two areas. One is what should be done to be of assistance to employers; the second is what kind of assistance workers need, both inside and outside unions, in order to participate more effectively in a safe work place.

Maybe Laurell can deal with the employee part, but I would like to talk about the employer part because I know lots of employers. They are not necessarily bad people; they are not evil; they are not anxious for people to cut off their fingers, wreck their backs or anything like that.

They have certain understandings about what is safe and what is not safe. They face certain problems in being aware of alternative ways of doing things. There is no reason they should have on the tops of their heads how to make things suddenly safe; these are complicated issues. But there is no assistance available to employers and, in fairness, it is understandable to a certain extent why changes that have been made in the last 10 years have not had a tremendous impact on the number of accidents.

The IAPA, which is supposed to be the body that gives the information, co-ordinates efforts and informs, is spending all its money on Blue Jays games. It is advertising between innings and is giving out a hollow message about how you have to be safe, but there is no content to it.

Its slogan used to be something like, "You've got it; use it." The world is a lot more complicated than that. I think the Legislature certainly recognized that in the kind of legislation and initiatives it has had in designated substances. But what is happening is that none of this kind of stuff is being fed to the employers by the organization to which you are giving piles and piles of money to do it.

I think IAPA is full of hacks. I do not know where the guys I have met in the IAPA come from and I do not know how they get appointed, but they are not on top of the issues; they are not on top of the world.

Really, as we said in the brief, what has impressed me--and I know what would impress employers--is the kind of work that is being done in the occupational health and safety centre, the federally funded one in Hamilton. It is giving out information that is useful to employers, or would be useful to employers if there were enough of that kind of service available.

It would help the safety committees. There are a lot of problems with safety committees because the workers on them have no power. But certainly it would make a lot more situations flow more effectively if information were available, and that could be a way accidents could be reduced. The Legislature set up a structure for safety committees, internal responsibility and all of this, and it is totally thwarted, in part by the fact that no information, no assistance, no sophisticated ergonomic studies are available in order to help them. The money you people have already committed is just being thrown away.

I know workers who go to IAPA seminars, and they fall asleep. They just cannot believe the kinds of simpleton approaches the IAPA puts forward; they are insulted. I know employers do not find it useful. I think there are a lot more constructive ways in which you could spend that money and be of assistance to employers.

Mr. Gillies: But one of the features of our legislation, with respect, is that it will clarify the board's authority to fund other safety programs.

Just by the by, I do not necessarily agree with you about the IAPA; I think in some cases it is doing very good work. But the point is that under Bill 141 your union council or the Ontario Federation of Labour can start a safety program and, if it acceptable or if it fits in under the legislation, it can be funded by the board. So you can start putting the kind of information you think is important out to your members. I personally think that is a significant improvement.

Mr. Dorfman: It is a start, but \$26 million is going to the IAPA and the other related associations, and we are talking about \$400,000 that has been given to the OFL, which is what I understand has been done. It is not being given to unions outside of the OFL. Half the unionized people in the province do not belong to the OFL; so there is another problem there.

The point is that you have \$26 million, and you have got \$400,000. We read in the paper what is happening to the money. Stewart Cooke has been appointed, and we understand it has all been given to the OFL. If it is any different, we would be pleased to see that. But the proportions of money--the \$400,000 here and \$26 million there--granted, it is a start, but it looks pretty tokenistic to me.

All I am saying, really--and I am saying this in the spirit of looking for a mutual way to try to solve some of these problems--is that there is some room for mutual approaches, and one of them is to give the employers more tools. The IAPA is not doing that. I am just trying to be helpful with that kind of perspective.

3 p.m.

Mr. Lupusella: Mr. Chairman, if I may, we are looking for answers to a problem which exists. I share your concern, but we found different ways. You are using the motherhood approach. Because we are not giving enough money to a trade union movement, let them come to us with different approaches and the money will be made available. The whole concept of this campaign about prevention, as a result of the past history of this association, has been a disaster, let me tell you, because of the motherhood approach.

Let us be concerned about the problem, but we are not solving the problem with \$26 million or \$28 million. For \$28 million, you can hire the best people in the province, experts on the trade, to visit employers, give seminars on the work place, inspect the machines and make recommendations about the machines which are causing accidents or to give recommendations to the employers on how to clean up the work place. We are talking about a lot of money.

The employers are coming to us and saying, "We are concerned about the rise of costs on the level of benefits." I am concerned that \$28 million is invested and has been spent for 70 years now, and it is time that we review this simple operation, which can play an effective and important role in preventing accidents and reducing the number of accidents in Ontario. The motherhood approach for the trade union movement--"I am going to give you money if you come out with specific programs" is a motherhood approach--is one with which I disagree.

Let us give a clear mandate to the association. Let us give them power as well to go to the employer's premises, inspect the machines, make recommendations and give seminars to the workers by taking half an hour of their payroll, paid by the employer, which in the long run will be a good investment for the employer.

I do not understand, when the past history of the Workers' Compensation Board has been so disastrous in Ontario, why we still continue to use the same motherhood approach instead of thinking about a revised approach that would be more effective. With \$28 million, I am sure we can find a team in Ontario to tour all the industries, talk to the employers and give direct seminars to the employees in the work place about the dangers of the machines. If the machines are not safe, let us force the employers to make the change. This is a good investment to reduce the premium.

Mr. Havrot: Mr. Chairman, just briefly, are there not any guidelines or laws under the act right now to require safety committees in various work places under the act after so many employees, such as 20 employees and up? I think it is 20 employees and under where you have to have two or three people in a safety committee who sit down and evaluate the hazards and the safety aspects of a plant. I think that is in legislation now, is it not?

Mr. Cain: Maybe under the Ontario Occupational Health and Safety Act but not under the Worker's Compensation Act.



Mr. Havrot: No, but there is some form of legislation now where the safety committees sit in with the union stewards, the foremen and so forth to evaluate the work place and particular sections of a plant. That is a mandatory requirement. You cannot blame the employer for everything. The way you are talking, you would almost think the employer is out there to kill every worker and put him out of commission.

It is a proven fact that it is safer in the work place than it is at home. Statistics will prove there are more accidents caused at home than there are in the work place. I am going to tell you that not every employer in this province--

Mr. Lang: It sounds as though you have taken a course from the IAPA--

Mr. Havrot: No, I do not belong to the IAPA, my friend.

Mr. Lang: --and that is the problem.

Mr. Havrot: That is not the problem. I will tell you something else.

Mr. Chairman: Mr. Havrot, you are permitted a question, and I will put you at the end of the list. Mr. Sweeney is the next person on the list.

Mr. Gillies: In reply to that, I wish to clarify that the pilot project being undertaken with the Ontario Federation of Labour is not the sum total of what we intend in this area. The legislation is much broader than that. I want to assure you that there is scope now for your organization and other organizations to undertake new approaches in this area.

Obviously you disagree with the approach being taken by the Industrial Accident Prevention Association. I suspect that every organization we might have before us might have a slightly different view about this area.

Mr. Laughren: We have all seen the asbestos ads.

Mr. Gillies: Sure. You said you felt Stewart Cooke and the \$400,000 was it. I want you to know that is one project. There is still a lot of room to do more.

Mr. Sweeney: The discussion has been so interesting that I am reluctant to come back to a very mundane issue.

Mr. Chairman: Try it.

Interjection: I will try to give you an interesting answer.

Mr. Sweeney: I want to get some information from you with respect to the return-to-work provisions that you are proposing. You are probably aware from our discussions that we have considered this in a long and lengthy way.



Two obstacles seem to come up. One is the number of work places where there is nothing for the injured worker to do once he comes back. That may be because the work place is too small and there are only five or six employees. It may be because the work place involves only heavy manual work such as construction, lumbering, mining, heavy industrial, whatever the case may be. We have that problem.

The second problem is the length of time that the injured worker is away and the displacement effect that takes place when he or she comes back.

Can you share with us your own experience in those two areas?

I think I can tell you pretty clearly that there is a growing consensus that if we could begin to resolve this question of the right to return to work, a lot of other answers would begin to fall into place. We keep running up against these kinds of obstacles. It is a case of us trying to find a way, not knowing how to get around them. From your experience, what would you suggest?

Mr. Dorfman: I think you are right. It is a very problematic issue. To just say you have got to go back to work and employers have to take the people back is rather simple-minded.

From what I recall of the wording of the committee's recommendations in the last report, it seemed to me it was a limited return to work. We saw that at least as a way to start to get down to what the issues were and work out some sort of system.

I think the fact that industry is going through rationalization now--there are a lot of robotics and technological changes--makes a lot of jobs more accessible to injured workers. I know work places where there are a lot more stationary kinds of jobs where the worker does not do manual lifting. Arms picking up heavy things, carrying them down and dropping them, and all that material handling that was done and caused a lot of accidents are now being eliminated by a lot of technological change.

There is also a lot of change in the work place so that processes are done differently, even if it is not through technological change. This period of a lot of changes in the work place is an apt time for injured workers somehow to be accommodated into that. There should be some possible onus on the employer to attempt to take people who have a right to return back into the system.

One of the common things that is said is, "What about unions and seniority?" The point is that it is a false issue. Where people have seniority, they should have a right to return. Where people do not have sufficient seniority, they will not be returning anyway. In a sense we are putting the cart before the horse. I think a lot can be done. To say it is a simple matter is foolishness, but there is a lot that can be done and I think now is a good time to do it, because there are a lot of changes going on in the work place.

If employers have jobs that someone can do or they are setting up new work procedures, now is the time to accommodate people. In other cases, it is going to cost employers money, but either they are going to pay it out in benefits if the guy who is looking for a job has some kind of permanent disability or they are going to have to adjust their work place and let the guy be productive.

Mr. Sweeney: What is the perspective of the unions you represent with respect to the displacement question?

Mr. Dorfman: If he has sufficient seniority to get back to work, he should have a right to go back to work. Every effort should be made to accommodate him according to what he can do.

3:10 p.m.

Ms. Ritchie: I think it is fair to say that we are not asking for additional rights for someone who has had the misfortune to be off on compensation. That person would not have some kind of superseniority upon his or her return. I do not see any difference between this kind of leave from work and a pregnancy leave in a work place that recognizes the principle of seniority. An employer must also make accommodations, and there are certain displacements. Where someone is told he or she is on layoff and it is done according to the seniority principle, that too would have to be recognized.

Given that there are going to be inevitable exceptions--I think we have answered the displacement effect question as best we can and made ourselves clear--where there is a problem of only heavy physical labour being available or there being legitimately nothing the person can do upon returning, it seems to me the proper approach here is to say that the individual has the right to return to work and that there is an onus on the employer to prove the need for an exception. It should not be the reverse, where the employee has to go through the whole process of demonstrating something. The employer is in the best position to know what is available. The onus should be on the employer to show that there is not that kind of work.

Mr. Sweeney: You start with the premise that the worker has the right to return, and the employer then has the responsibility to prove or demonstrate why he or she cannot.

Ms. Ritchie: Yes. If there is no work that person can perform, the onus is on the employer to demonstrate that. I think that is the only fair and reasonable way, understanding that there are going to be some exceptions. I think what has to be envisaged here is that so many things cannot be foreseen and dealt with just in one bill. You get into how you deal with investigations and cleaning up unsafe conditions.

You are not talking about something the IAPA or the WCB or any one branch of the ministry is going to be able to take upon itself. That is why one of the things we have been saying is that there has to be a serious re-examination and integration of a number of branches so that, for example, when there is an

accident, there is some investigation. If something can be done to correct working conditions, that sets up a chain process within the ministry.

Right now, there is no chain process; it just stops and starts. This part of the ministry stops and that part starts. There is a fairly young, undeveloped approach to ergonomics within the ministry. To develop that, more people have to be brought in as consultants. One of the reasons for urgency on this is that so many employers now, if they are not engaged in technological change per se, are engaged in rationalizations of the work processes.

We are seeing all kinds of experiments, combining this machine and that machine, to see whether one operator can get the work done that was performed by three operators previously, except the two machines have never been put together before and all kinds of unsafe or unhealthy conditions arise out of putting them together. At one place this week, which has still not responded on how they are going to deal with, they are simply putting up a whole new racking system for storage that has never been heard of before. The racks are falling all over people, and somebody had to go to hospital with a bleeding foot yesterday.

When an employer is going through a process of rationalization, as is happening in so many places now, there is no process by which we can invite the ministry to play some role, where it comes in and says: "You have to tell us what you are planning to do with these changes in the work place. We have to look at the ergonomics of it and just generally the health and safety features of it." There is no integration whatsoever.

Also, because there are so many health and safety risks in some of these changes, it becomes all the more important that the Workers' Compensation Act contain some significant protections for employees in a number of areas.

One of them is to introduce some kind of protection against vexatious and frivolous appeals by employers. There is that kind of wording in the Employment Standards Act so employees cannot make those kinds of complaints against employers. I think the shoe is on the other foot in this situation, and employees have to have some protection against employers who are doing that. In other words, the board could refuse to examine certain levels of inquiries by employers.

Second, there is the question of protection against harassment, of which we gave some examples.

The third is the most extreme form of harassment or reprisal, which is a refusal to take someone back to work. That has to be integrated with the whole approach on training, which the ministry does not have at present. There is no real onus on employers to engage in any kind of training. Because there is so much unemployment now, most employers are saying, "To hell with our having to do any training, because there are so many people out there for us to choose from. Why should we?"



There are a number of very serious problems. If the government and the ministry are serious about dealing with those, they have to put all those different features together in a package.

Mr. Havrot: Mr. Chairman, I would just like to pursue the Industrial Accident Prevention Association again. There were some accusations made that I was the tool of the IAPA or that the IAPA has not been doing its job.

I will relate to you a situation that happened when I was involved in the lumber business 25 years ago. The Ontario lumbermen's safety association sent people into our camps to instruct workers in safety procedures in the bush. They were told to wear hard hats, safety toe boots and nylon knee pads to protect them against chainsaw cuts.

Now, what happens? We send a gang of men into the bush and they start cutting logs and so forth. Then our foreman goes out and finds one of the workers is not wearing his helmet, the next one does not have his safety pads on his knees and the third one is not wearing safety toe boots.

What do you do with an employee in that case? Do you blame the employer if an accident is caused? What would you suggest we do with that employee when he refuses, for his own benefit, to wear these? We made it a mandatory requirement that they wear safety hats, safety toe boots and shields to protect their knees against chainsaw cuts.

Mr. Lupusella: I do not want to fight about (inaudible).

Mr. Havrot: Never mind. I am just relating to you. You were saying for 70 years the IAPA has not done anything, and I am just trying to tell you in a small way an incident that happened to me.

Mr. Lang: I would respond by saying that is precisely the IAPA's perspective and point of view, that the problem with accidents is workers and that they are invariably responsible for virtually every accident that occurs.

You refer to statistics, which are highly questionable statistics if you have been in any sort of factory, that more accidents occur at home and that it is safer in factories than at home. Just walk through a factory and see all the stuff buzzing in your ear and what not.

Mr. Havrot: But you are diverting from what I have essentially asked you.

3:20 p.m.

Mr. Lang: No, I am not. This is an important attitudinal problem. When you have the employer's thrust of safety being directed at the individual to wear what has often been poorly designed and uncomfortable stuff, granted it might be safer, but there have always been those problems as well. At the same time,



in the larger picture of safety, little is being done. The main thrust is still to get out there and get your quota of logs that have to be cut and what not.

Mr. Havrot: No, they did not work on a quota. I am asking you how you nursemaid these people. Do you have to send a man out to make sure he is wearing that equipment for his own protection? The employers can only do so much.

Mr. Lang: The employers should have some responsibility. That is what happens in factories when workers--

Mr. Havrot: I am not talking about factories. I am talking about logging operations.

Mr. Lang: There are real responsibilities.

Mr. Havrot: What I am trying to find out is how you deal with an employee who refuses to wear protective equipment for his own benefit when it is mandatory.

Mr. Lang: There are fines and provisions in the act right now.

Mr. Havrot: So you fire the man and then he goes to the Ontario Human Rights Commission.

Mr. Chairman: There have been points made on both sides, and the time has expired for this delegation.

Mr. Havrot: I want to ask one more question very quickly.

Mr. Chairman: Phrase it in such a way that you can get a yes or no answer.

Mr. Havrot: It says here: "If there were no compensation board, the courts would be deciding the amount of damages for work-place accidents. The awards would be far higher than current compensation benefits and would take no account of the employer's ability to pay."

I would like to refer to you one accident that happened in 1977. Three men were burned to death in a train accident. One of them was my best friend. One of the widows refused to take compensation and took the matter to court on the advice of her lawyer. Seven years later, that case has still not been settled. That is precisely what I am trying to get at here.

The other two widows have been collecting workmen's compensation benefits, but the third, who took the option of going through the courts, seven years down the line, still has not had her case resolved. Are you trying to suggest to me an injured party would be much further ahead by going the court route?

Mr. Dorfman: No. We are in favour of the present system. All we are trying to do is show that there should be some kind of relationship between what one would get in one situation and what one would get in the other. It should not get too unequal. I am

sure the widow--and I am sorry for your loss--will collect a pile of interest in the end.

Mr. Havrot: If it is resolved.

Mr. Dorfman: I agree with you that going that route is not helpful.

Mr. Chairman: I would like to thank the delegation for coming and adding their words to our deliberations. We appreciate it very much.

Mr. Lupusella: Mr. Chairman, if I may, I would like to say a few words to Mr. Havrot.

Mr. Chairman: Perhaps you can do that while we are changing delegations.

Mr. Havrot: You can find me in the phone book.

Mr. Lupusella: I was very critical of the IAPA. If you want to restore the credibility of the organization, let us elect my colleague here as its president.

Mr. Havrot: I am all in favour. You never know, he may need the job.

Mr. Gillies: I want to make one comment. Do not leave yet, because you may want to yell at me. I am sure the minister would want to thank you for many of the points you have raised in your brief. I might say, though, because he feels very strongly about this, we do take some exception to your premise that the annual increase is brought in only as a response to the demonstration every spring. In fact, the bill we bring in every year to increase the rates is on our legislative agenda very early in the year, and the minister is very proud to bring it in every year.

Mr. Laughren: We did not know that.

Mr. Dorfman: If that is the case, why can the minister not tell us in February what the amount is going to be?

Mr. Gillies: I did not say it was not subject to revision. I said the annual increase is always in our minds. It is not just made in response to the demonstration.

Mr. Dorfman: Why do the assessors not take the cost of living into account? Why can it not be announced earlier?

Mr. Chairman: Thank you very much.

Mr. Gillies: We are delighted to bring it in every year.

Mr. Chairman: The Law Union of Ontario; Mr. Newhouse.

#### LAW UNION OF ONTARIO

Mr. Newhouse: There are no written materials to go with this presentation. We hope it will be fairly brief and to the

point. We appeared last April in front of the committee, and I was the main spokesperson at that time. I see a lot of the same faces here; so I will not introduce the Law Union of Ontario in any detail.

Basically, there are five topics that I was going to touch on: section 13 of the current act, the proposed corporate board, the proposed appeals tribunal, the issue about judicial review of the WCB, and finally some comments on medical practitioners at the board. I will move through those.

The format seems to be if there are questions, they would probably come at the end. This is perfectly fine, but if someone feels disposed to interrupt while I am speaking, that is also fine.

Mr. Chairman: We would rather they did not.

Mr. Newhouse: First of all, I do not know to what extent section 13 has come up at prior meetings of this committee. I have to confess we were not really that aware of section 13 until a matter of a few weeks ago, but having become aware of it--I see Mr. Cain from the board is here and he is probably not too aware of it either--it seems that section should be repealed.

Mr. Chairman: Mr. Cain knows all.

Interjections.

Mr. Gillies: I would not prejudice that.

Mr. Newhouse: The section basically provides that if a worker is receiving temporary payments and moves outside of Ontario, he is thereafter not entitled to receive any such payment unless there is a certificate from a medical referee indicating that the disability is likely to be permanent. Following that, they have to submit proof of identification and ongoing reports.

That section, to my understanding, is very rarely used by the board in the administration of the payment of benefits; specifically, the part about medical referees having to certify that the disability is likely to be permanent.

Obviously, just on that narrow point, the section is very bad because it discriminates between workers within Ontario and those who choose at some point to leave the province, while they are still perhaps only temporarily disabled and may yet fully recover.

It discriminates against those workers leaving the province. If they leave, and for example the disability is not going to be permanent, it follows that the benefits under this section could be terminated on the spot. That seems very strange and certainly is not what goes on now.

I have a feeling as well that it could be argued that this reflects on mobility rights and different things under the Charter of Rights. That is very questionable.

Another point with respect to the section is that the new powers of the corporate board are, including other things, making certain agreements with certain governments in other jurisdictions both within Canada and outside of Canada. I believe there are already some intraprovincial and perhaps international agreements.

Currently, as far as I am aware, those agreements do not have any requirements with respect to certification by a medical referee, so it seems rather odd to give, in the new legislation, the corporate board the express power to go into these agreements and then have this anachronistic section kicking around that refers to medical referees when it is the only place in the act where that concept will remain, and requiring certificates when it just may not be appropriate.

Obviously, if someone is inside or outside of Ontario, a prerequisite of getting benefits is that he has to be disabled. It is not terribly hard for someone to review a medical report, whether it is written up in Ontario or written up in Newfoundland, and decide whether or not it indicates the worker has recovered completely from the disability.

With respect to the monitoring function, if that was the original idea of section 13, that can certainly be done and certainly is done every day by the board for all kinds of claimants located all over the world. It is a question of, is there disability? If yes, the person should get paid.

In a nutshell, there is absolutely no point to section 13 continuing to be in the act and, furthermore, it is quite discriminatory.

3:30 p.m.

Finally, if that section is to go down the tubes, as I am suggesting to the committee, the committee should also be looking at the definition section, clause 1(1)(s), because there is a definition there of medical referee which merely says, "'Medical referee' means a medical referee appointed by the board." Obviously, if you repeal the only section in the act that refers to medical referees, you will need to have the term defined in the act, because it will not appear anywhere. If one goes, the other should follow.

Second, I was interested to observe that this morning the committee was addressed by something known as the Employers' Council on Workers' Compensation. I see we are in substantial agreement with respect to the corporate board, much to my surprise and delight, on at least one point. They said at page 14 of their brief, "The corporate board should not affect the decisions of the independent appeals tribunal and section 78 of the act"--that is, the draft act--"should clearly reflect such independence."

I would submit that this is an appropriate position to take vis-à-vis the corporate board and the appeals tribunal. There is no reason whatsoever for the corporate board to have as one of its members the chairman of the appeals tribunal, and if the concept of the appeals tribunal is one of independence from the board--and



it seems to be the concept--there is no real reason the two should be connected at the corporate board level.

Furthermore, I think it can be argued--and the Association of Injured Workers' Groups in its brief used an analogy that I thought was fairly apt--that it is like having the Chief Justice of the Supreme Court of Canada sit with the federal cabinet when it is making its decisions. It is clearly mixing up two different types of functions.

With respect to the corporate board, the new subsection 56(1) seems to conceive of two full-time members and five to nine part-timers, and we have a couple of concerns with this.

First, with respect to the five to nine part-timers it is suggested that there be a representative of labour, a representative of employers and so on; the two full-timers do not appear to be representative of anyone. Obviously it is anticipated that at least one of the two full-timers would probably be someone like the current vice-chairman, who has been around the board for a while, but in the light of recent developments about patronage appointments one has some concerns as to who is going to be appointed as chairman and as vice-chairman.

I would suggest it might be appropriate to write into subsection 56(1) that the two full-time people shall also be appointed in consultation with the same groups that are being represented by the five to nine part-timers. I suspect the Ministry of Labour was reluctant to have a representative of workers or injured workers as the chairman of the board. Maybe that is not such a bad idea, in fact, but it seems that the concept is of an executive board that is more connected with the day-to-day affairs. I would recommend as a very minor adjustment here at this time, since I do not expect any major adjustments, simply representation through suggestions or lists of who the possible candidates for the positions are.

As well, with respect to the part-time appointees, it is not clear why it was left out that one of the interest groups it should be representative of is injured workers. I think it cannot be stressed too often. We just heard from the Confederation of Canadian Unions, which represents noninjured workers most of the time, we hope. There are often differences in interests between injured workers and workers at large, especially because it is the injured workers who deal with the board on a day-to-day basis.

Since this is a fairly large constituency and also since there are definite organizations such as the Association of Injured Workers' Groups and its subset, the Union of Injured Workers, it seems there are what might be considered representatives of injured workers who could be consulted or who could even be nominated to fill the number of these part-time appointments that will be falling in the direction of workers as opposed to employers.

The other comment with respect to the corporate board is something that is rather worrisome, especially if the two full-timers are more or less representative of the cabinet of the

day and not of anything much broader than that.

Under the new subsection 71(2), as I read it, it appears that any majority decision must include the vote of the chairman or the vice-chairman. As I read that, what it means is that if one or both of those individuals was there but did not vote with the majority at a particular meeting on a particular issue then that would just be nullified. In other words, they have what amounts to a veto power. I would submit there is no need for that. It is a very dangerous position to be in.

Mr. Laughren: May I interrupt you?

Mr. Newhouse: Surely.

Mr. Laughren: When we finished the other day, we were to get a ruling or clarification on that. Did that ever come about?

Mr. Chairman: Yes, we had it this morning. You were here, were you not?

Mr. Watson: It was before you got here this morning.

Mr. Laughren: Oh, I am sorry.

Mr. Chairman: Right. You can read it in Hansard.

Mr. Gillies: I was not here but I understand the minister said this morning it was certainly not the intention that this full-time chairman have a veto. He is going to review the matter.

Mr. Laughren: Good. Thank you.

Mr. Newhouse: That very effectively deals with the concern.

Moving right along to the third item, the appeals tribunal, I have dealt with the issue of the chairman of the tribunal sitting on the corporate board. Once again, it is not only not necessary but I would submit it is actually a very regressive step in terms of trying to create an independent appeals tribunal.

The appointment power of the appeals tribunal in terms of the chairman and vice-chairman, subsection 86b(1) of the new legislation, it seems once again that those two positions are appointed without any particular consultation with any groups. It is not so true of the representatives, but in terms of what are probably fairly obviously the two key positions on the appeals tribunal, it should be the case that if it is going to be a serious attempt to have a system which is representative of employers, workers and injured workers, at the very least those two appointments should be in consultation with the same groups that will be consulted in terms of those who are forming the other members of the appeals tribunal.

Once again we have a point here, talking about "members of the appeals tribunal, equal in number, representative of employers

and workers, respectively." I would suggest it should also include, "and injured workers."

Another problem with the appeals tribunal that seems to stick out rather profoundly is this subsection 86n(1) of the new legislation which makes it very clear that the corporate board is basically in the controlling position in terms of appeals tribunal decisions. That section basically indicates that if a decision is made that "turns upon the interpretation of policy and general law...the board of directors may, in its discretion, stay the enforcement or execution...review the issue and direct the appeals tribunal to reconsider it in light of the determination of the board."

Obviously, if a direction is coming back down again from on high, unless you have a very courageous and independent appeals tribunal there is no likelihood of that at all. They are just going to say: "We do not care. We hear what you say and we are going to say what we said in the first place." It is obvious that the intent is that the corporate board will ultimately control what might be considered the significant decisions of the appeals tribunal. There is no particular reason that should be the case if it is the appeals tribunal that is supposed to be independent of the board. The best suggestion we can make is that subsection 86n(1) should simply be repealed. I suppose subsection 2 would not make much sense either if subsection 1 was not there.

3:40 p.m.

There are two points about appeals which are not addressed in the proposed legislation. First of all, the current act excludes the operation of the Statutory Powers Procedure Act with respect to the proceedings before the Workers' Compensation Board. Basically, as I am sure everyone is aware, that act could be described as a minimal standard of procedural guidelines for dealing with tribunals.

It eludes me why the Workers' Compensation Board has to be in a special, privileged position so that certain minimum standards set out in the SPPA should not have to apply to it. It is no better or worse than any of the other dozens of tribunals and boards set up under all kinds of pieces of legislation which are bound by the SPPA. If you are looking at rationalizing the system in terms of the other tribunals that exist across the province, it would make some sense to delete the section that indicates the SPPA does not apply to the board.

There is another point that is not dealt with directly in the legislation but which is something that a number of us have experienced, and I suspect a number of people here have experienced if they have attended WCB hearings. If you have a non-English-speaking client, you obviously have to have a translator and the board provides one. That is usually quite satisfactory.

However, in terms of the actual hearing itself, the translator usually just translates the questions to the injured worker and the answers from the injured worker. Most of the time

the injured worker, who may speak no English or a small amount of English, has no idea what is being said. He has no idea of the context of where a question may be coming from. They are basically sitting there and, all of a sudden, out of the blue they are asked a series of questions and have to give a series of answers.

In ordinary court proceedings, it is virtually standard that we have simultaneous translation so that as the judge is talking, or one of the lawyers is talking, or one of the witnesses is talking, the accused person or whoever it happens to be gets a translation of exactly what is going on. There is resistance to that, by the way. I have encountered it at the appeal board hearings as they are currently constituted.

The resistance is obvious. First, it slows down the proceedings. It takes a lot longer if you have to wait for a translator to go through it all. Second, it is noisy because you have someone who is trying to whisper quietly but at the same time it is a small room and it is very hard to hear. It is confusing. None the less, if the basic concern of these appeals is to make sure that the injured worker or the employer, depending on who is appealing, is getting a fair hearing, or that everyone is getting a fair hearing, it seems that anyone who has language problems should have the automatic right to have all the stuff translated as he is sitting there.

I would like to think it did not have to be in the legislation. However, given that a new Appeals Tribunal is about to be created in all likelihood, it seems to make some sense that we should try at the start to make it as effective as possible. One of the simpler ways of doing that would be to put in an easily worded clause about how a proceeding shall be simultaneously translated for the benefit of anyone who has an interest--in other words, the employer or injured worker--in the proceedings.

I realize it is definitely a little more awkward, but in the long run I think you would find that injured workers, and even employers who have language problems would feel much more aware of what was going on and would have a better understanding of what they were going through.

The fourth point I wanted to address was the concept of judicial review. This is really not dealt with in the proposed legislation so it follows that the current standard in this area would stay about the same. The current standard is that there is a privative clause in section 75 that makes it extremely difficult to take any of the decisions of the Workers' Compensation Board to court.

Mr. Sweeney: Are you referring to the bill or the act?

Mr. Newhouse: I am referring to the current act.

Subsection 75(1) is the basic privative clause. That is not being repealed so one can assume it would be enacted similarly--

Mr. Sweeney: There is a reference on page 19 of the bill that says, "Subsection 75(1) of the said act is amended by adding... 'Except as provided by this act.'"



Mr. Newhouse: That is right. I think the "except as provided" is basically worded to cover the new appeals tribunal so that it is also specifically exempted from judicial review. I think it is basically substantively the same as far as what you are going to end up with is concerned.

Professor Weiler's first report was rather insulting to the judiciary with regard to judicial review. He characterized it by saying: "The experts are all at the Workers' Compensation Board. You do not want these judges messing around deciding cases."

That is not the way judicial review would work; it is not as if you would have the Divisional Court sitting there as the last level of appeal. As it stands now, the cases that do break through the privative clause involve significant errors of law or patently unreasonable interpretations of the legislation. I would suggest that the Workers' Compensation Board is not any better than any other tribunal at interpreting legislation, whereas judges tend to be a little more sophisticated in that area.

To illustrate the point, there is an ongoing case now that I am involved with--we will not get into names or anything; this is before the courts--in which we are talking about an interpretation of the definition of "accident" in section 1 of the act and in the application of the presumption clause as found in subsection 3(2) of the act.

At the lower levels within the board it was very clear that the board was not applying--actually, it was a problem with understanding the issue perhaps and resolving the question--but it was not defining "accident" in the way it was set out in the act or in a way that is consistent with a number of reported cases in other areas. It was simply failing to provide any reasoning with respect to the application of the presumption in subsection 3(2), which says, to boil it down, that if an accident happens while you are at work, it is presumed that it was caused by the work unless the contrary is shown.

Usually, it is not a big issue. If someone gets his arm cut off at work, it is obvious it happened at work, was due to work, occurred in the course of employment and so on and so forth. However, cases such as heart attacks, cerebral aneurysms and things like that fall in the middle because there is always the issue of what really caused it to happen. Sure, it may have happened while the person was at work, but was it caused by the work?

The case we are involved in now is a case rather like a heart attack case, in which there is no doubt that it happened at work, but it is really hard to say whether it was caused by work. According to the act, the board is supposed to presume that, since it happened during the course of employment, it arose out of it, and the board has simply refused to deal with the question of applying that presumption.

We hope that when the Divisional Court gets around to it, it will agree that if there is a presumption clause, it has to be used. If a directive eventually filters back down to the board

that there is this provision, that it has to be used and that it is there for a reason, it may have some effect. These are the types of issues a court can come to grips with and, one hopes, exert some influence in cleaning up what we might call the legal operations of the board.

Obviously, the vast majority of appeals, decisions or day-to-day decisions that are made at the board do not raise anything other than really very simple factual questions: is the person still disabled or is he not disabled? That is the most common question. The second most common question may be something like: is the level of permanent disability 10 per cent or 20 per cent? Those types of questions would probably live and die within the confines of the Workers' Compensation Board, so it is not as if we are talking about deluging the courts with all kinds of injured workers, spending seven years to get cases resolved and so forth.

Rather, we would have the courts assisting the board in making decisions that are consistent with the intent of the legislation and with the meaning as actually set out in various provisions within the legislation. In a sense, it will encourage a certain amount of accountability of the board to the public because ultimately the cases will receive some attention.

3:50 p.m.

Basically, the point is that consideration should still be given at this time to reviewing subsection 75(1) of the act and ending up with something that would have a rather limited right of appeal to the Divisional Court on questions of law in cases of decisions rendered by the appeals tribunal, since that will be the ultimate level of decision-making.

The final area I want to touch on is what was originally the concept of the medical review panel but now I guess you could label it the medical practitioners. The concept seems to be very good. I think overall there is probably some support for that.

One of the biggest problems is that it does not address the more fundamental issue of the day-to-day workings of the board and the day-to-day operations of the Workers' Compensation Board doctors. Most injured workers are frustrated at that level and not so much at the level of what is going on at an appeal, because thousands of decisions are being made that will never be appealed but are effectively being made by board doctors.

There are very serious concerns that I am sure have been stressed over and over again by the Association of Injured Workers' Groups about the competence--I am not trying to get myself sued here for suggesting that board doctors are incompetent, but the bias, independence and so on--of board doctors. One would not expect this committee to be recommending the abolition of board doctors, although one would be delighted if it did. But that is the fundamental problem, and people should be aware that it is not going to be addressed in any significant way by the proposed legislation or by having a medical practitioner

who comes in at the very tip of the iceberg, affecting a rather small proportion of the cases.

With respect to the specifics, there are a couple of comments. First of all, once again, when the Lieutenant Governor in Council is coming up with suggested names of medical practitioners, it would also seem appropriate to consult with representatives of injured workers to derive the lists.

The second point that should be stressed is that these practitioners should be available for cross-examination at the actual appeals tribunal hearing. In other words, they see the worker, they make their report, the report is circulated to the various people who are involved in the appeal and then the hearing is reconvened. If one of the parties wants to cross-examine that medical practitioner, or those medical practitioners, he can do so by indicating to the chairperson of the tribunal that he will require the presence of the practitioner there.

That would go a long way towards making the system something injured workers can see that not only is there an independent medical practitioner but also they or their lawyer or their representative will have the chance to look at that report and specifically relate that report to the practitioner, ask questions for clarification and cross-examine on points. I am sure employers will be delighted to do that, because obviously if the report is in favour of the injured worker, then employers are going to want to cross-examine and so on.

I submit that it is a very healthy tendency to encourage these practitioners to have to come there to back up their reports instead of just writing something in a report and then forgetting about it.

To take it a step further, to go back to the board doctors themselves, I would suggest that consideration should be given in terms of the appeals tribunal hearings to making WCB doctors, if they have examined or written a report or whatever, compellable to attend to be questioned at these hearings by the employers or by the injured workers.

That would probably go a lot further than my previous point, because it is often about the WCB doctor's one-line opinion that a lot of the representatives would really like to say: "You have said 'I agree,' regarding a long memo written by a claims adjudicator. What do you mean when you say that? Explain it and justify the remark." If the explanation does not convince the appeals tribunal, then it would be that much better because we would have some substance behind a one-line medical report. I would not even call a one-line report a report; it is simply a response to an inquiry that is often cryptic in the extreme.

Currently, of course, the injured worker can have his own doctor attend, but I would suggest that any practitioners involved at the board level or the so-called medical practitioner should both be available for cross-examination at the appeal hearings.

That was all I wanted to say. I see it is four o'clock and time for questions and so on.

Mr. Chairman: Thank you very much for that presentation. First question, Mr. Sweeney.

Mr. Sweeney: Thank you. Let me go backwards from the very last observation you made to make sure I understand you correctly. Are you suggesting that any doctor who has been involved in a particular injured worker's medical needs could be required to appear before the appeal board?

Mr. Newhouse: Yes. Obviously, there is a question of degree involved. If some doctor saw someone for five minutes--which is your typical board pension examination--but in any event, if someone just had a very peripheral involvement with the file, there might be some residual ability for the appeals tribunal to say, "Well, we do not think it is really necessary to subpoena this person." The theory of it would be that any doctor who has had a significant involvement with the file could be compelled to explain, especially if his report is being relied on with respect to making a decision.

Mr. Sweeney: Excuse me. The point I want to clarify is you are not talking just about board doctors when you say that, if I understand you correctly.

Mr. Newhouse: Certainly not just board doctors. The concept is medical practitioners who are not, by definition under the proposed legislation, board doctors. They should be those people at the very least, since their reports are critical to the determination of an appeal. They should be coming, and I think that is a clear thing which stands above almost any other level of medical involvement.

Currently, obviously if an injured worker can get up the money, there is nothing preventing him from asking his specialist or his family doctor to come to an appeal. Sometimes they do. Often employers, if they have had a company doctor involved, will bring them to the appeal. It is usually not an issue, or it need not be an issue, with respect to outside practitioners. Really, what it boils down to is board doctors, that practice.

Mr. Sweeney: It is actually the first part which concerns me. I can see why we probably could compel--and I use that word--a board doctor who is an employee of the board to appear.

Mr. Newhouse: Sure.

Mr. Sweeney: What I cannot see is how you can compel a medical practitioner from the worker's community--his own doctor--to appear. My fear is that a number of doctors currently will do anything they can to avoid being medically involved with a workers' compensation case at all. If you add the further dimension that they are going to be able to be subpoenaed to a board hearing, they will literally disappear. You are going to



have great difficulty in getting doctors to deal with workers' compensation patients.

Mr. Newhouse: Technically, it is true the way you compel--

Mr. Sweeney: Unless the doctor is an employee either of the company or of the board.

Mr. Newhouse: Sure. Technically, as you have suggested, you can actually legally compel them by issuing the subpoena. The consequences for not appearing are ultimately being tossed in jail, or something like that. Practically, I think your concerns are valid. On the other hand, personal injuries lawyers are often faced with the same kind of dilemma where someone gets hurt in a car accident and they go to see their family doctor.

The family doctor does not particularly want to go to court to have to testify. You get a much rougher ride than you will probably ever get at the Workers' Compensation Board. The fact is that I do not believe too many treating physicians would say: "Oh, a car accident? Well, I may have to go to court, so you go somewhere else." In reality, I am not sure it would be a tremendous problem.

Mr. Sweeney: To a lesser extent in my community, but I understand from my colleagues, to a much greater extent in other communities, the reality is they have difficulty dealing with family practitioners and particularly specialists, if they are dealing with a compensation case. It is almost as bad as a woman going to a hospital in a rape case. The doctor just does not want to touch her because of the possibility of having to go before a hearing. I am just concerned about that. Obviously, you cannot speculate as to what is likely to happen, but I think I would--

Mr. Newhouse: Sure. The more prudent approach may be something different. I would not say what you are suggesting. I do not want to commit you to something like that, but basically I submit the narrower points of board doctors who are employees, as you have suggested, or perhaps someone who was used as a consultant by the board specifically up at their hospital, who may not be a full-time employee and, finally and most important, the practitioners for the appeals tribunal.

Mr. Sweeney: Let me touch very briefly on an earlier statement you made with respect to judicial review. I believe I understand the limited way in which you are making this recommendation, but I do have two concerns.

The first one is that, whenever the question of getting the courts involved and workers' compensation has come up, directed to any witness who has appeared before us, other than lawyers who seem to be representing employers, we always get a very flat statement: "No way. Keep them out. We do not want to get involved at all. The no-fault system, with all that implies, is something we want to stay with."

The second point is that you may be aware there is, or just was, a case where a member of a board of directors or an executive of a company was subpoenaed before a court because there was a loophole in the present act. It apparently was not intended, but it happened. That has been closed up in this act.

Mr. Newhouse: That is right.

Mr. Sweeney: But it is being tightened even more.

Mr. Newhouse: Right.

Mr. Sweeney: My concern is that, once you start opening that up, given the seemingly general consensus that we do not want to get the courts involved, how do you limit them? Once you say the courts should be allowed to be involved for this and this and this but that is all, my own experience is that, once you open that door, then it would be difficult to close it.

Mr. Newhouse: I think the thing to realize at the beginning is that you are talking about two fairly distinct processes, and this kind of relates to Mr. Havrot's person who was hurt on the railroad.

The border case, which is the one you are talking about with the loophole being closed where the executive was successfully sued--and it also took about seven years through the courts from when the accident happened--is what we might classify as a personal injury type of situation since it happened to be at work. Instead of suing someone for a car accident, you either apply for, workers' compensation or, if you can figure out a way, you try to sue somebody.

Judicial review of a compensation board decision presupposes, first of all, that the person has elected to take compensation, although there is a very narrow area there where it is not going to be true; for example, if the board under section 15 in Berger had made a decision, or they made a decision in the Ryan case under section 15 about whether or not he could sue, and that decision is being judicially reviewed.

However, they are two different questions. One is an administrative law type of question controlling the operation, so to speak, of the Workers' Compensation Board, the way they make their decisions, whether or not their hearings meet the components of natural justice, whether or not they are interpreting the act correctly.

The other more frightening prospect, I think, from the point of view of the various lawyers, including myself, is the idea that every injured worker might run to court. That would not happen in a judicial review situation, and I have specifically not talked about the right of action of injured workers in general.

To make a blanket statement, I do agree that probably anyone, including any lawyer who thinks about it on a broader scale, would say the Workers' Compensation Board administers a vast number of claims quite well, especially the minor injury,

minor cut, broken bone or whatever that heals with no disability. You just would not want those cases to go to court. It would be mind boggling if 400,000 court cases were started up every year on relatively minor injuries.

Mr. Haggerty: It would be a lawyers' field day, would it not?

Mr. Newhouse: Not really, because lawyers would not get paid very much if the total value of the claim were only \$300 or \$400, and a lot of these claims are quite small. Legal aid would not issue a certificate if that were all that was involved.

I am not going to comment on whether I agree or disagree with closing the Berger loophole because it is sort of a side issue. It is very large, but most of that personal injury stuff is perhaps best left aside from this discussion, which is just really concerned with administrative law and supervising the board's own conduct in the way it deals with its claims and its legislation.

I rather doubt that there is going to be a vast flood of judicial review applications, any more so than the labour relations board or the health disciplines board gets appealed. It does not happen all that often. The reason, of course, is that most of the decisions that are made by the board are not decisions raising these questions of interpreting the act.

Whether or not you give a guy a 10 per cent pension or a 20 per cent pension, it is going to be very hard to call that an error of law, looking at medical information and making a decision.

Mr. Sweeney: Who is going to make the decision as to what is reviewable by the court?

Mr. Newhouse: Ultimately the court would make it, beyond putting something in the legislation to the effect that errors of law or appeals can be heard on questions of law at the Divisional Court.

What will develop fairly quickly is that the Divisional Court will say: "This is not an error of law. We do not want to have anything to do with it" or "This is an error of law and we think they did not apply subsection 3(2) properly. They did not define the term 'accident' properly. Their definition of common-law spouse does not accord with the way it is written in the act," things like that.

The courts will ultimately say, "We are willing to look at this issue," but if it is something like, "Should he have got 20 per cent instead of 10 per cent?" the courts are going to say, "We are not going to sit on that." That is where the board has its expertise, saying how much the pension should be and whether someone has recovered from a disability. The Divisional Court is not going to want to mess with that stuff. It is fairly self-contained.

I do not think you have to worry about a vast flood of cases. Obviously there will be more cases if the privative clause

is removed, but I think over time that will sort itself out, especially because, if the cases on the seminal sections are dealt with, they will not be going back to court. What will happen is that the appeals tribunal will say, "We now know we have to look at subsection 3(2) and actually apply it concretely," and it will do so. The claimant may not like the actual decision, but if it does raise an error of law in terms of the application, it is never going to go beyond the board.

I think you will find, after a possible flood of applications, it will drop down to a fairly low level and only significant things that have not been dealt with before will go through. The rest of the stuff will just be back under the administration of the board, relying on these court cases where applicable and otherwise dealing with it on a day-to-day basis.

The personal injury side, whether someone should sue somebody or take compensation benefits, is an entirely different question.

Mr. Laughren: I am going to report you to the Law Society of Upper Canada for your views on keeping the lawyers out of the system.

Mr. Sweeney raised a couple of points I am concerned about, particularly the medical one requiring the doctors to appear. I represent an area near Sudbury where there are a lot of compensation problems, and some doctors express dismay at having to deal with the board. I think it would make it all the more difficult. If you subpoenaed them, they would have to come, but few of them would want to get involved in the first place. That bothers me.

Another thing you talked about was subsections 86n(1) and (2); and I agree with what you said. You cannot have an independent appeals tribunal with the board of directors of the board peering over its shoulder and second-guessing its decisions. I do not know to what extent the majority of the members of this committee would go along with removing that. I do not have a good sense of how the rest of the committee feels.

Would a compromise--and it is strictly a compromise, because I do not think it needs to be in there--be saying in subsection 86n(2) that the board of directors of the board must hold a hearing upon a review under subsection 1? Then it would be held up to the light, as it were, if they overruled anything done by the appeals tribunal.

Mr. Newhouse: If you are going to do that, I suggest you also take out the "not" from "it is not required to give reasons" and say "it is required to give reasons."

Mr. Laughren: Right.

Mr. Newhouse: Also, when it says "notwithstanding any rule of law," the implication is that it is somehow putting itself above that. I would take out that part of subsection 2.



I think it would be preferable at the very least if the representatives of the various parties who have already gone through the appeals tribunal hearing, and, in effect, are about to have the decision squashed or whatever, had the chance to make their pitch directly to the corporate board.

4:10 p.m.

Mr. Laughren: I wonder whether the parliamentary assistant to the minister would think about having an amendment drafted, assuming you would agree with it. At least the committee could debate the amendment, if you feel there is any legitimacy to it at all. I think a lot of us probably do. We are concerned about that. Legislative counsel could perhaps draft an amendment and even if the committee decides not to support it, at least it is there and we could have a look at it. Is that a reasonable request?

Mr. Gillies: I will certainly take a look at it and respond to you.

Mr. Laughren: The other thing is that your presentation took a little different approach to the new bill from that of most of the presentations. It would be nice if we could have something we could read. I am wondering whether it would be difficult to put what you have done on paper. I suppose we can read Hansard.

Mr. Newhouse: To be quite honest, I would not mind except for the fact I am leaving town tomorrow--not because of this, but I am going on holidays for about two and a half weeks. I do not know the relevant time frame. If it is no problem for some time in late August, sure.

Mr. Laughren: We think this committee will be debating clause by clause in September. That is the schedule now.

Mr. Newhouse: Sure.

Mr. Laughren: I think it would be helpful to do that because I think it is a good presentation from a different angle. It is coming at it in a different way from the way most people have come at it.

Mr. Newhouse: Okay. I hope I can put it together by the end of August.

Mr. Laughren: No problem. As long as it is after September 4.

Mr. Chairman: It can be submitted to the clerk of our committee.

Mr. Lupusella: I appreciate the content of your presentation. You emphasized one real principle of what the WCB is all about. It is not part of the judicial process. It is a quasi-judicial body which takes into consideration accidents on behalf of injured workers.

You tackled the issue of an independent tribunal, the medical review panel and so on, within the present system and said

the adjudicators and appeal boards are relying heavily on board doctors' reports--I am referring to the doctors who are currently employed by the board--even though this accusation is dismissed by the board. Based on the daily operation of cases before the board, we know for a fact, just by taking a look at the disclosure of the (inaudible), how adjudicators and appeal board people are asking medical opinions from doctors employed by the board.

With Bill 101, when we are talking about a truly independent tribunal system, in theory, and a truly independent medical review panel, do you think those two bodies should have in front of them opinions expressed by doctors employed by the board? What kind of system do you have in mind in order that the principle of impartiality will be kept by the two bodies?

Mr. Newhouse: I guess the ultimate position I suggested would be that there should not be any board doctors at all. I think the Association of Injured Workers' Groups and others have taken that position as well.

Frankly, I do not have too much concern with dealing with one-line medical reports if the person is aware of what was actually said or what was not said. If you can go into appeal and say, "Dr. So-and-so has just said 'I agree'," how can that possibly be given any weight at all?

If you have an appeals tribunal that is sensitive to the concept of a medical report that actually says something, it would not be hard to be able to dismiss these things and say: "We will not give any weight to that. It is only a one-liner. Let us look at the hard medical reports we have either from our practitioner that we set up the assessment with or reports from wherever." A lot of these things could be dealt with that way.

I do not think it is necessarily practical to say, "We will exclude all medical reports that were generated by a WCB doctor, because they reflect an obvious bias." They do, but it is obvious to everyone there is an obvious bias, and you have a representative for the injured worker who can say: "Wait a minute. My doctors are saying this. Other doctors are saying this. The medical practitioner who was involved is saying that. How can you possibly place any weight on a one-line report?" If that is the way the system is going to work, I am not too concerned about the actual mechanics.

At a broader level, the problem is that most of the decision-making that goes on is not going to be appealed. Most of these one-line reports will be definitive. That is where the problem is, because you are stuck with a very poor basis on which medical and ultimately adjudication decisions are being made by the doctors.

I think that issue was discussed previously. The adjudicators should be adjudicating, and the doctor should only be providing medical information and not saying: "I think you should disallow the claim. I do not think an accident happened." Doctors are not there to decide whether the accident happened. They are there to say, "I can detect no disability," or whatever. That is a more fundamental problem.

In regard to the appeal system itself, I think the board doctors can be kept under control. It is more of a problem for all the other claimants who never realize or never have the energy or the money or whatever it takes to follow the case through. That is going to get into the broader question, which can probably only be resolved, first of all, administratively. If you are not going to get rid of board doctors, at the very least you should try to develop some kind of requirement that they write reports with reasons instead of just conclusions.

Mr. Laughren: I often write to a doctor and ask, "Would you please tell me whether, in your opinion, this person's condition is related to a traumatic incident?" Under your terms and your thinking, I would be guilty of asking that doctor to adjudicate the claim. Yet without that opinion, you are lost in an appeal.

Mr. Newhouse: Not necessarily. You are simply asking him to give his opinion. You are not asking him to say yes or no. Ultimately, you are going to take that report to the appeals adjudicator and say: "This doctor's opinion is that an accident happened at work for these reasons. The disability is consistent with a fall of 10 feet, and so on." You are not waving it around and saying, "This is the decision." You have to convince an adjudicator that this opinion has merit; so it is a two-stage proposition.

The other thing I thought you were going to say was that your doctor writes back and just says, "Yes, in my opinion there was an accident." The problem is that is not a good report. You would not want to go into an appeal with a report like that, simply saying, "In my opinion, it is." The next question will be "Why?"

Mr. Lupusella: I am puzzled by the same problem you have. Bill 101 gives the authority to establish two independent bodies, an independent medical review panel and an independent tribunal panel, but we are still keeping the claims review branch level and the adjudicator as a preview to the final appeal system to which the injured worker is entitled.

My specific concern is about the adjudicator. First of all, with Bill 101, the injured worker is in touch with the two independent panels up to the time there is a decision that must be appealed. The paradox of the full process is that a portion of the present system will be kept on. This means the claims review branch and the adjudicator will rely again on medical reports or opinions expressed by doctors employed by the board, which defeats the principle of independence by the two new panels that will be established. I cannot reconcile this contradiction in my mind.

The other thing you did not comment on was the clinical rating system, even though in Bill 101 we are going to be faced with a different type of a situation. I would like to remind you that the old injuries will be treated, if you so wish, with the present system. You did not express any thought about the clinical rating system.

Mr. Newhouse: There are a couple of points I want to make in response. First of all, my thoughts with respect to the disability scheme are basically one and one with the association's position on that. I do not really have anything to add to that.

With respect to your concern about the administration of the board, I think every legislator has to remember there is only so much that the legislation can do. The administrators, like Mr. Cain, are the ones who have to strive to develop the system that is going to ensure that claims adjudicators, for example, demand a full report from a board doctor when they are about to make their adjudicated decision. There is nothing inherently wrong with the system of having claims adjudicators, initial adjudicators, or a claims review branch that filters it out.

There is nothing wrong with the structure, it is the actual content of that structure where the adjudicators simply defer to a one-line medical opinion, rather than saying: "I have to make the decision here. I want to know what I am making my decision on, and I want some reasons here so I can sit down and think about them." Obviously, there is not a lot of time for these adjudicators to launch into extensive meditations on any particular file, but these are the areas that I would suggest can never be effectively addressed in legislation.

You cannot write into it, "A claims adjudicator shall consider each file most carefully," or something like that. That is nonsense. What you have to have is administration. At the very top of it you can tinker with the appeal system, and you can have medical practitioners, but the administration--the stuff that Professor Weiler said he could not understand why everybody was complaining about it--that whole thing is almost totally outside the legislation. Yet, it is where probably 90 per cent of the problems are, as far as our experience is concerned.

Mr. Lupusella: That is why we are raising this issue. You are not sure about the mechanics. We have particular concern about the mechanics that will be established at the discretion of the board. If I can speak for one second on behalf of my friend Mr. Laughren, we lost faith in the board's mechanics a long time ago. I do not think it is able to change its mind with Bill 101. That is why we have the concern about this specific bill.

Mr. Newhouse: The only scope in its proposed legislation--

Mr. Lupusella: Oh, you are here, I am sorry.

Mr. Newhouse: I do not want to insult Mr. Cain too much this afternoon, but the only scope in the proposed legislation would be if you had the policies filtering down from the corporate board that may be directed towards administration. If appointments to key administrative positions are made by the corporate board in an attempt to put people in place, we are going to encourage the kinds of things I have just mentioned.

That is how it is going to happen and perhaps, with a better corporate board and so on, to the extent to which you can



strengthen the corporate board's representation of injured workers and the humanistic concerns about administration, it could work very well. It also could not work at all if you get a bunch of hack appointees who really do not want to do anything, who would just let the system run as it has.

Mr. Lupusella: I would like to get some sort of answer. I do not have the legal mind you have. I am not a lawyer, but we are talking about the quasi-judicial process being implemented at the board's level and considering that the government of the day has different quasi-judicial boards in different departments of the government's operation, certain decisions can be appealed to cabinet.

Considering that Bill 101 tells us appeal tribunal decisions and the medical review panel decisions are final and cannot be appealed any further, do you not think it is fair to say that, in the same way as other quasi-judicial boards in Ontario can have their decisions appealed to cabinet, the board's decisions can be appealed to cabinet as well to keep in line with the same philosophical and governmental approach.

Mr. Newhouse: I am not exactly enamoured with the cabinet, but I do not see any reason to differentiate or to separate out workers' compensation matters.

Mr. Lupusella: They are the same, are they not?

Mr. Newhouse: As far as I am concerned, they are the same administratively. The only difference is that the Workers' Compensation Board is a lot bigger and, if the cabinet got deluged with WCB things the way the Ombudsman has been, we might find that the cabinet did not do anything else, so it might not be practical because of the volume unless it was restricted, let us say, to the kind of thing I am talking about in terms of judicial review, very special circumstances.

Speaking personally, I would be just as happy with that kind of thing going the judicial route. Perhaps that is where my lawyer's bias comes through, rather than a politician's bias.

You could do both. There is no theoretical reason why you could not do both, although it should be very clear in both cases that it is not some wide open thing with the potential for thousands of people to be submitting petitions to cabinet or applications for judicial review, because the system would blow up.

Mr. Lupusella: For the sake of uniformity.

Mr. Laughren: I think what this bill needs is an anti-hack clause.

Mr. Chairman: That appears to be all the questions for you, Mr. Newhouse, and we would like to thank you for your presentation. You have been very helpful to the committee in its deliberations.

Before we adjourn, Mr. Cain has a response to Mr. Lupusella's concern about a particular appeal.

Mr. Cain: Last week Mr. Lupusella brought up the specific matter of an injured worker who had requested a partial commutation of two pensions but had his request denied. I was asked to look into the decision. I did so. I asked senior members of the vocational rehabilitation division to review the claim. They did and, based on the policy, they considered the decision was correct.

As a result of that, I went to the appeal tribunal and I have arranged an appeal board hearing for August 8 at 2:30 p.m.

Mr. Lupusella: Thank you very much.

Mr. Laughren: That was the one in which the board wrote a letter and said, "Because your income is only \$110 less than your expenses, we do not think you should be allowed to commute."

Mr. Lupusella: That is the one.

Mr. Chairman: There is a final item before we adjourn. On Thursday there are the two flights. We hope the tickets will be here tomorrow morning. If not, it will be after lunch and we will have to arrange for somebody to carry them for those who are not going to be here.

The flight leaves for Sudbury at 8:55 in the morning, departing Sudbury at 6:10 in the evening, arriving back at Toronto at 7 p.m. The flight for Thunder Bay leaves at 7:50 a.m., leaving Thunder Bay at 5:10 p.m. and arriving back here at 6:40 p.m..

Does anybody wish to go from Queen's Park by limousine, or does everybody have his own arrangement or how are we going to go about that?

Mr. Havrot: I want a ride.

Interjection: I want a ride too.

Mr. Chairman: We will have a couple of cars here, one going at each time. We will let you know the exact time the limousines will be leaving.

The committee adjourned at 4:29 p.m.



CA 24N  
XC13  
-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, JULY 25, 1984

Morning sitting





## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)

VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)

Havrot, E. M. (Timiskaming PC)

Lane, J. G. (Algoma-Manitoulin PC)

Laughren, F. (Nickel Belt NDP)

Lupusella, A. (Dovercourt NDP)

Mancini, R. (Essex South L)

McNeil, R. K. (Elgin PC)

Riddell, J. K. (Huron-Middlesex L)

Sweeney, J. (Kitchener-Wilmot L)

Watson, A. N. (Chatham-Kent PC)

Yakabuski, P. J. (Renfrew South PC)

Substitution:

Haggerty, R. (Erie L) for Mr. Riddell

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister of  
Labour (Brantford PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Witnesses:

From the Canadian Manufacturers' Association:

Heffernan, D. W.

Morrison, O.

Thompson, E. A.

From the Ontario Fruit and Vegetables Growers' Association and  
the Ontario Federation of Agriculture:

Avery, D., Chairman, Labour Committee, OFA

Fisher, P., First Vice-President, OFVGA

Long, R., Second Vice-President, OFVGA

Ward, B., Executive Member, OFA

Weatherall, M., Ontario Cattlemen's Association Representative to  
the Farm Safety Association Inc.

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, July 25, 1984

The committee met at 10:07 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: I will call the committee to order. We have two delegations that are going to appear before us this morning. First is the Canadian Manufacturers' Association, and after that is the Ontario Fruit and Vegetable Growers' Association.

Some replies, responses and so forth to various questions that have been asked over the last few days, particularly of Mr. Cain, are being handed out. You can take the opportunity during the noon hour to review some of those responses, and perhaps we will have a few minutes this afternoon to discuss the various points and questions that have been raised with him after we complete our afternoon's delegation or delegations; we are not sure right now whether there will be one or two this afternoon.

First of all, the Canadian Manufacturers' Association. Gentlemen, we will let you carry the ball from there. You can introduce yourself and your delegation, and then away we go.

CANADIAN MANUFACTURERS' ASSOCIATION

Mr. Thompson: Mr. Chairman, I am E. A. "Tommy" Thompson. I am chairman of the Ontario division of the Canadian Manufacturers' Association. I am accompanied here today by Mr. Oliver Morrison, on my right, who is the chairman of the workers' compensation committee of the CMA; Mr. Dan Heffernan, who is a member of that committee; and Ms. Kathryn Filsinger, back here, who is the industrial relations adviser to the Ontario division of the association.

We are here to submit a brief on behalf of the Ontario division of the Canadian Manufacturers' Association to this standing committee, concerning Bill 101, An Act to amend the Workers' Compensation Act.

I should say in starting that the Canadian Manufacturers' Association participates in the Employers' Council on Workers' Compensation, which presented a consensus submission to the standing committee on resources development yesterday. The CMA has contributed to and supports the positions set forth in that submission. The submission we make today will address those issues that are of special concern to the CMA, which we feel may need somewhat more emphasis than the generalized brief of the employers' council.

The Ontario division of the CMA welcomes this opportunity to comment on Bill 101. We understand the bill represents the first stage in a two-phase process to reform the workers' compensation system in this province. The association wishes to reaffirm its belief in and continuing support for the principles upon which the Workers' Compensation Act is based. However, there are some concerns and frustrations which the CMA has voiced on behalf of its members in the past. These have continued to grow and intensify. These stem from a number of sources.

Because workers' compensation benefits are the most generous of all income supplement or replacement schemes, workers' compensation is being looked to as a remedy for many social situations it was not designed to cover. It appears more attractive to someone in difficulty to become a case covered by workers' compensation than by any other assistance program. Therefore, there is considerable suspicion borne out by the dramatic increase in the average duration of claims that the plan is being abused.

Employers are also frustrated by the fact that many claims are, by their nature, impossible to prove or refute as being occupationally related. For example, claims such as hearing loss may be more related to an employee's lifestyle than to the working place. Similarly, back strain and other types of injuries which are invisible, even to medical professionals, now make up at least one quarter of the board's claims and an even greater proportion of all costs.

Other issues of concern include inappropriate use of the second injury enhancement fund to deflect the complaints of individual employers; the overlapping of benefits, such as the Canada pension plan; the greatly increased duration of claims during the recession; the effective indexing of pensions where there has been no wage loss suffered; and those sections of the act which allow the continuation of benefit payments simply because employment is not available.

While these have been longstanding concerns of the association, recent events have emphasized the dramatic nature and extent of the problems which employers face. Recently, the Wyatt Co. did a study in which it estimated that the board's unfunded liability, as of the end of December 1983, was \$4.9 billion. This sum is staggering.

Any proposals that would add costs without removing opportunities for abuse would only worsen the problem. The goal must be to design a system that gives a better level of benefits to those who most need and deserve financial assistance following injury at work. At the same time we must lessen the opportunity for abuse, since it is severely restricting the employers' ability to support the improvement of benefits where they are deserved. It is neither affordable nor justifiable to simply continue increasing benefits indiscriminately.

We note that Ontario is one of the most export-reliant jurisdictions in the world. More than 40 per cent of our manufacturing jobs in this province depend on our ability to



compete in the world marketplace. This makes our economy, and manufacturing in particular, extremely sensitive to significant cost increases. It is in everyone's interest for Ontario's manufacturing industry to remain healthy and competitive if it is to continue to be an important source of employment in the province.

I will speak to some of the specific points mentioned in the summary.

Moving to a ceiling of \$31,500: In its submissions to the standing committee on resources development in May 1983, the CMA Ontario division supported increasing the ceiling to 175 per cent of the average industrial wage and then raising it by five per cent increments over the next five years to a maximum of 200 per cent of the average industrial wage.

The association continues to support the principle that to the greatest extent possible, injured workers should be compensated up to the level of their earnings. However, this recommendation was made before the association became aware of the board's soaring unfunded liability and of the fact that manufacturers are being asked to pay dramatic increases in their assessment rates to pay for the cost of past accidents.

For many industries, jumping from the current earnings ceiling of \$25,500 to \$31,500 would in itself increase costs by a full 23 per cent. Coupled with the proposed assessment rate increase of 15 per cent in 1985, this could lead to a virtual doubling of the average cost of workers' compensation per worker between 1983 and 1985. We therefore cannot afford any increases in the ceiling on covered earnings beyond the five per cent inflation guideline at this time.

Improving rehabilitation supplements: Bill 101 contains three proposals which would liberalize the current supplement sections of the act, clause 41(1)(b) and subsection 43(5). These are (1) adjusting pre-injury earnings for inflation to calculate the amount of the supplement, (2) increasing the supplement for older workers unlikely to benefit from vocational rehabilitation and (3) removing receipt of Canada pension plan disability benefits as a bar to receipt of Workers' Compensation Board supplements.

These supplement provisions are very troubling for industry, especially in times of recession, because as written they relate directly to the availability of suitable work. For example, clause 41(1)(b) provides that when suitable modified work is not available to the claimant with temporary partial disability, the compensation may be raised to equal the amount that would be payable were the individual temporarily totally disabled.

Although this clause was well intended, the association believes it has led to abuse of workers' compensation benefits and has created an open-ended opportunity for claimants to receive full benefits. It confers greater benefits with respect to payment for unavailability of work than exist for active employees, and employers are bearing the costs of unemployment through their assessments.



We note that the average claim duration has risen dramatically in the last number of years. In 1983 the average claim was almost 50 per cent longer than the average claim in the base years between 1975 and 1979. The availability of suitable employment should not be relevant in a system that compensates for loss of earning capacity.

With particular reference to the proposal to remove receipt of CPP benefits as a bar to receipt of a subsection 43(5) supplement, we note that eligibility for CPP benefits is dependent on severe and prolonged disabilities that remove the worker from the work force. On the other hand, eligibility for WCB supplement is contingent upon availability of suitable employment. We question how an individual can be eligible for both benefits at the same time.

The association also recommends that under these supplement sections, reference should be to work the injured worker is capable of performing rather than to work suitable for the worker's capabilities, since this has led to difficulties in bringing employees back to the work place.

Dual award system for dependants: Under Bill 101, survivors would receive a lump sum for noneconomic losses and a continuing payment based on the deceased's pre-injury net wage. Both payments would depend on the survivor's age.

The association recognizes it is necessary to increase workers' compensation survivor benefits. However, we do not believe pension benefits under the new proposal should continue after the spouse's remarriage. This is especially true in the light of the lump sum payment that spouse has received under the new dual award scheme. To our knowledge, no other province allows a spouse to continue receiving pension benefits after remarriage.

Proposal to repeal sections 21 and 22 of the Workers' Compensation Act: I might preface my reading of the printed comments into the record here by saying this topic is one of prime importance to the Canadian Manufacturers' Association. Sections 21 and 22 provide that an employer may require a worker who claims compensation to have an examination by a qualified medical practitioner of the employer's choice. If the employee refuses to do so, his or her right to compensation may be suspended until such examination takes place.

The association feels very strongly these provisions must be retained. Despite the board's best intentions, there are inevitable delays between the time a worker goes on claim and the time when he or she can be required to have a medical examination at the board. Clearly, accurate and timely medical information is the linchpin of the workers' compensation system, and removal of these sections simply would reinforce the widespread perception among employers that the only input they are capable of having in this system is paying the assessments.

10:20 a.m.

Of even greater importance is the fact that the medical practitioner chosen by the employer will probably be a specialist

who is knowledgeable in the area of occupational health and who is familiar with the job setting and the physical requirements of the various jobs. Such expertise and knowledge is critical in successfully rehabilitating the injured worker.

Removal of these sections would be a regressive step. We note that in its 1984 report the select special committee on the Workers' Compensation Act in Alberta recommended liberalizing the provisions relating to the employer's right to require the employee to have an examination by a physician of the employer's choice.

Access to records: Employers should have the same access to the board's file and records respecting the claim as the worker has. In this regard, "employer" should be defined as a health care professional delegated to receive and assess medical information and advise management.

Clarifying the board's authority to finance training programs: Clause 71(3)(j), as revised by section 24 of Bill 101, authorizes the Workers' Compensation Board to extend financing for health and safety education. The association is very concerned with the thrust and the vague wording of this provision. There seems to be literally no limit on the amount of money or the nature of the undertaking which the board could authorize. The association believes that all money collected by the Workers' Compensation Board should be exclusively for workers' compensation purposes, which includes the work of the accident prevention associations.

The restructured corporate board: We commend the government for introducing this restructured corporate board with outside representation. Employers look forward to having an active role in that structure.

Permanent pensions: The Canadian Manufacturers' Association strongly supports the making of a lump sum payment based on the extent of the disability. This gives a capital sum to the worker immediately rather than being held by the board to be paid out as a permanent pension.

Under subsection 43(4) of the current act, an individual with impairment of earning capacity that does not exceed 10 per cent receives a lump sum equivalent to the periodic payment. The association recommends that for impairment exceeding 10 per cent, but less than 20 per cent, the individual should be given the option of receiving a pension or receiving the lump sum equivalent of that pension.

Mr. Chairman, that is our official submission, and I thank you for the opportunity of presenting it. We are now available for questions.

Mr. Sweeney: Mr. Chairman, with respect to the CMA's last recommendation on lump sum payments, may I ask Mr. Cain whether he has any idea what the record is for requests for commutation in the 10 to 20 per cent range?

Mr. Cain: I do not know. I do not get that many requests for commutations, but I really do not know the parameters of the requests, from what percentage to a high.

Mr. Sweeney: As you probably know, at the present time an employee can request that a pension be commuted, but the board retains the right to review the request and to veto it if it wishes. You are asking that it be automatic if the employee requests it. That would be the difference; it would be automatic.

Mr. Chairman: Up to the 20 per cent.

Mr. Sweeney: I realize it is up to the 20 per cent. Can I go right back to the beginning of your report? You made a reference to indexing at the top of page 3, "The effective indexing of pensions where there has been no wage loss suffered." Could you explain that a little further? I am not quite sure what you are referring to there.

My understanding, just so you will know where my question is coming from, is that a person who is on a permanent pension, and that pension is based upon the wage he was earning at the time of the accident, is eligible for a percentage increase on an almost annual basis to keep up with whatever earnings are today. It would be my understanding that there is a wage loss principle, but obviously you are thinking of something else.

Mr. Morrison: We are referring here to cases where an injured worker is returned to full employment at full wages. He has a pension on top of his full earnings and that pension is now effectively being indexed with the ad hoc legislated increases that go through. If he is earning full wages and there is no wage loss involved, we do not believe this pension should be indexed.

Mr. Sweeney: Okay. The assumption you are making is that the worker on pension has returned to full earnings, that his pension does not constitute his earnings.

Mr. Morrison: That is right.

Mr. Thompson: In fact, he will get indexing on his wages along with the rest of the employed people.

Mr. Sweeney: Right; I understand. The reason I raise the question is that most of the people with whom I work, and I suspect it is probably true of my colleagues, are living on their pensions. Their pension, plus a lower-income job, is their source of income. There are relatively few people with whom I come in contact who have a pension and go back to full wages. That is why I did not understand the point you were making.

Mr. Thompson: There are a fair number with partial pensions who are back to work, and I think this is what Oliver is speaking to particularly, the partial pensions.

Mr. Morrison: We are referring strictly to where there has been no wage loss suffered. Those are the important words.



Mr. Sweeney: Okay, that is what I did not understand; I was not sure of the context in which you were saying it.

I want to come back to the point that you indicated just a couple of minutes ago that was of real and significant importance to you, and that is your ability to have your own doctor examine the employee.

It has been our experience, in some cases at least, that the "employer's doctor" takes on the same tone as the Workers' Compensation Board doctor and that the kinds of medical reports that come back are definitely biased and slanted. I think that is one of the reasons why you are getting a major change here; the record seems to prove that is not a very desirable kind of medical report, and we just seem to be battling with them all the time.

I can well understand your interest in it and your concern about it. Could you suggest to us any way we could get around that? What we are trying to do in this legislation, I think you probably realize, is to have an independent medical review that represents neither the employee nor the employer, nor in fact the board, because we realize that in all of these cases, if a doctor "represents" somebody, there tends to be a bias or a slant to his report. Whether that is as it should be is neither here nor there; it just so happens to be.

We would very much like to deal with the case if you could tell us some other way to do it.

Mr. Morrison: We realize you have made provisions for a medical assessor at the stage of the independent tripartite hearing in the new appeal procedure. We feel that by the time you get to that, a lot of things have happened in between, especially in shorter-term disabilities possibly.

We are not asking that the doctor whom the employer might ask to examine the claimant take any authority away from the board. The only thing we are asking is to have the liberty of submitting another medical opinion to the board in order for it to make a judgement on this. I imagine that if there were a difference of opinion between the claimant's doctor and another doctor, it would be submitted to specialists or what some consider board doctors to make a decision in this area. It is a perception here.

Mr. Sweeney: But surely, Mr. Morrison, unless there is a difference of medical opinion, there is no advantage to you to have a second opinion. If they are obviously going to end up with the same opinion, what is the point? If there is a difference, then it is going to be adjudicated by this independent medical panel; so we are right back where we started from.

10:30 a.m.

Mr. Thompson: I think you may be missing a further point that we made on that. The primary interest in this one, and it is both self-interest and humanitarian interest, is that we think the major job is to rehabilitate employees and get them back to work.



As I say, that is partially out of self-interest and partially out of humanitarian interest because no man is as well off as when he is working, in terms of psychological improvement.

Many companies today have available to them experts in this field of assessing both the nature of the disability and the opportunities to use the capabilities of an injured person. It is to expose them to this type of examination that allows us to find whether there are ways we can rehabilitate.

We think many companies, as I say, both out of enlightened self-interest and humanitarian interest, have available to them people who are experts in this field. This is the sort of thing we want to bring to bear on them.

Mr. Sweeney: Would it be the case at the present time that such companies would offer, on a voluntary basis, such medical expertise to their employees? Is that the norm? I am not familiar with it; that is why I am raising the question. I assume we are talking of fairly large companies. I do not see how anyone else could afford access to this kind of expertise that you are referring to.

Mr. Heffernan: There are industrial medical clinics available for that type of thing also. Basically, if you pick the normal general practitioner, he is not familiar with a lot of the industrial type and related problems, the carpal tunnel syndrome, industrial noise exposure and so forth.

Mr. Haggerty: You can talk about a general practitioner and say he is not qualified in that area. I have seen cases where companies have their own doctors who have put an injured worker back to work. He has gone directly back to the job where the original injury happened, particularly back injuries. If you talk to a general practitioner about it, he will tell you they sent him back to that heavy work environment too soon and placed him in a position to receive a second injury.

It has worked well, I know, in a number of industries, particularly in my area. In good economic times they have done that and it has worked very well, but now, since the economic downturn, these persons, who eventually found light, modified work within that industry, are the first ones to go when the time comes for a layoff regardless of seniority. That is based upon their own medical doctor, who is knowledgeable in that area.

I think you are looking for a two-way street here.

Mr. Thompson: No, I think what we are looking for is the same sort of thing you mentioned on the other side a minute ago. We are looking for something which will give employers the perception that they have an opportunity to do this. As the act is proposing to remove this opportunity to do it, people are saying, "Why should we even bother to do it on a voluntary basis?"

What we are saying is, let us at least get this perception that the employer has an interest in it as well and is, therefore, interested in having the employee examined.

Mr. Sweeney: The direction of my earlier question was, do you have any experience to indicate that when an employee of yours is offered this kind of opportunity, he or she would refuse it more often than not and, if so, why?

In other words, what I am reaching for, obviously, is a voluntary opportunity rather than a compulsory opportunity. Can you tell me, from your experience, why one is preferable to the other? I would tend to agree with you. Most employees, most injured workers, in my experience want two things: to be rehabilitated and to get back to work as quickly as possible. By far and away, that is what most of them want.

Therefore, if you were to offer them medical expertise that would assist them in doing that, I would tend to think they would accept that offer and, if they are not, I would like to know why, from your experience.

Mr. Morrison: We have a medical department, a medical facility, and it is open to anyone who feels he wants to come back. If he feels there is a job there, he can go and see our medical director and he can be examined. There are times when the medical director will turn him down too and say no; this has happened.

In the majority of cases yes, people want to go in it and come back. Sometimes they do avail themselves of the privilege. But we and employers do feel there are certain cases where they would like to be in a position to be able to have another medical opinion they could forward to the board. They can go through the adjudication process, but it is a long, involved process at times.

Mr. Sweeney: But I sense that you are saying it is the special cases; it is not the run of the mill. Then more than likely they are going to go through those two or three stages; more than likely they are going to hit this independent medical review panel.

What I am reaching for is, are you telling us that in your judgement, in your experience, this is not going to work, it is not going to be effective? I would like to hear that from you if you think it is so, because that is obviously part of the bill now, and we have to make a decision.

Mr. Morrison: It will be effective at that stage, yes. But I think removing the right now is a perception that employers will get from the fact that this right has been removed from them and they have no opportunity for input to the board or input on these claims at all.

Mr. Sweeney: At the medical level.

Mr. Morrison: Yes.

Mr. Heffernan: It would be worth while adding that a lot of the companies--not only the one I am affiliated with but a lot of others I know of--have attempted to bring the local general practitioners from around the area into the plants to show them

exactly what their processes are to try to educate them about what the workers are expected to do, but we have had very little success in doing that.

Mr. Sweeney: That is commendable action. I do not know how you can force a doctor in; that is obvious.

Mr. Laughren: I commend you too for that attempt to get the doctors to understand the process. The area I represent has a lot of mines, and I think there should be more understanding of the kind of work the miners do and of their stresses.

I would really like to start off on a positive note. I liked your suggestion that having claims up to 20 per cent commuted be discretionary on the part of the worker. It would cost more upfront money to the board, but surely it would mean that the administrative costs would in the long run be lower. As well, a very large proportion of claims is below 20 per cent; I think we were told the other day that the average disability claim is about 18 per cent. Is that right?

Mr. Cain: Approximately, yes.

Mr. Laughren: There is the potential there to reduce the ongoing administrative problems of the board considerably as long as you make it optional, so that is a positive suggestion.

I do not know quite how the Canadian Manufacturers' Association is structured, but I wonder if the CMA, through one of its committees, has ever worked out compensation costs as a percentage cost. You might decide, for example, that advertising costs are five per cent of your revenue, that salaries are 28 per cent of your total revenue and on and on until you get down to the cost of doing business.

We know what the percentage cost of workers' compensation benefits is as a percentage of payroll only, right? It has always concerned me that we speak two different languages. We always talk about compensation assessment as a percentage of payroll, but all other costs are a percentage of a much larger figure. Are you with me? I wonder if you have ever done that kind of analysis.

10:40 a.m.

Mr. Thompson: It is very hard to do. One of the problems we always have in talking about compensation assessments is that we tend to talk averages. It is the old story of drowning in an average of two feet of water. The average of \$3 does not mean anything to the fellow whose rate is \$25--

Mr. Laughren: No, no. I meant the--

Mr. Thompson: --and, as some of the members and the employers' council pointed out, there is a tremendous range in the amount of assessment.

The second part of that is that the labour content in any manufacturing industry varies tremendously. It can vary from 15 to



75 per cent of your costs. The compensation cost again becomes a factor of--the averages are difficult to strike. That is all I am saying.

Mr. Laughren: You are stating the obvious. You are not dealing with the question, which is, how serious is compensation assessment as a percentage of the cost of doing business?

Mr. Thompson: Let us do it this way, on quick numbers, off the top of the head. Do not hang me on these.

Let us take a company with 100 employees. You can take an average of earnings and go all over the lot, but it does not really matter what you say, \$25,000, \$20,000, because you are taking a broad range of people. Let us take \$20,000. That is \$2 million of labour costs. Take an industry where labour costs are 50 per cent of total sales cost. That is a pretty good average on a lot of manufacturing industries I have been involved in.

You have a company with sales of \$4 million. With most companies today, if they are making three per cent on those sales as their net income it is pretty damned good. It is tough to do that in a manufacturing industry. We have to narrow in on what we are talking about. So you are talking about a potential net profit of \$120,000.

We are talking increases in assessments here that might be double. If the average assessment is \$4 or \$5--let us say it is \$5 on that \$2 million of wages--quick, somebody help me--you are talking a 20 per cent increase on that. You are talking about a \$200,000 increase in assessment on a company that is making \$120,000 after taxes. That is how important it is. It gets to be a very major part of what is left over to run a business.

Mr. Laughren: That is what I am trying to get at. You can say that, and yet if your profits are \$120,000, why are you saying the compensation assessment must be based as a percentage of that?

I have not done it for a long time now, but I used to read profit and loss statements. You had your revenue and then from your revenue were deducted all the different costs which were based as a percentage of those revenues.

We are not talking about percentage of property. We are talking about percentage of revenue. When I was in the private sector and given a budget--it might be advertising or whatever--I was given that budget as a percentage of sales. Right? So I knew what I could spend, based on anticipated sales. That is what I am trying to get at. Obviously, you do not have the answers here today.

There is some credibility lost by the private sector when it complains about assessment and bases its assessment costs on a figure that is not a standard on which you base other costs. That is for you to sort out, not me, but I think it is--

Mr. Thompson: I am afraid you are talking to the wrong



people. We are not the people who decided to assess workers' compensation on labour costs, it is the compensation board. It is the only logical thing to assess it on. What else are you going to assess it on?

Mr. Laughren: As a cost of doing business.

Mr. Thompson: That is not really related to it.

Mr. Laughren: What are other costs based on?

Mr. Thompson: All of our labour benefit costs were based on the cost of labour. All of them.

Mr. Laughren: Yes. I am not questioning--

Mr. Thompson: What are union dues based on?

Mr. Laughren: I am not questioning--

Mr. Thompson: They are not based on revenue. They are based on the cost of labour.

Mr. Laughren: That is the workers' revenue--

Mr. Thompson: We are beating a--

Mr. Laughren: Fine. I am quite happy to let it lie, but out there people are thinking, "What are they basing these numbers on?" It is your credibility that is at stake, not mine.

I have a couple of other questions. On page 2, you stated that the hearing loss may be more related to an employee's lifestyle than to the work place. I assume you mean listening to the stereo or riding Skidoos, that kind of thing.

Mr. Heffernan: Nonoccupational disease.

Mr. Laughren: Is it not true that the hearing loss is not assessed unless there is exposure to noise in the work place?

Mr. Heffernan: If an employee is showing hearing loss, you can have the compensation board assess him, whether or not it is a hearing loss due to industrial exposure. There is always noise at a place of work; it is just a question of how much.

Mr. Laughren: You would agree, would you not, that a claim would not be accepted unless there is excessive noise in the work place?

Mr. Heffernan: No. You can have areas where a person is working at a level that is less than the present standard of 90 dB(A) and a person is assessed for hearing loss. It may not be because he worked there for 30 years, but prior to that he may have been working elsewhere, where there was a noisy environment.

Mr. Laughren: Okay. He had to have exposure to excessive noise, though, before any claim is awarded?

Mr. Heffernan: Industrial noise, yes.

Mr. Laughren: That is correct. I just wanted to make sure that was on the record, because I do not think you would want to give people the impression, which this brief might do, that a person can work in a quiet environment, and because of a lifestyle be assessed a hearing disability award.

Mr. Heffernan: No.

Mr. Laughren: I did not think you would want to leave that impression.

Mr. Heffernan: No.

Mr. Laughren: On the question of continuing benefits after marriage, would you say that benefits should not continue after remarriage, period, or should benefits continue for children?

Mr. Morrison: We did not refer to benefits to dependent children. We were referring to remuneration in the spousal sense.

Mr. Laughren: That would bother me a bit. I do not agree with you, but I can see your argument on the remarriage thing. Say it is a woman and she has three or four kids, and there is an allowance for those dependent children. If someone marries that woman, I do not think it is fair that you would cut off the allowance for those children who are not the responsibility of the new spouse.

Mr. Morrison: We are talking about spousal benefits.

Mr. Laughren: So you are not saying that about the children?

Mr. Morrison: That is correct.

Mr. Laughren: On the partial disability pensions, I want to understand what you meant by that. Are you really talking about the indexing or about the very existence of partial disability pensions when someone goes back to work?

Mr. Thompson: The indexing.

Mr. Laughren: So you are not objecting if someone has a partial disability pension and goes back to work at full rate?

Mr. Thompson: We are saying if the individual has the capability to earn an income competitively with other workers, then why should he get an indexed pension?

Mr. Laughren: So it is not the pension you are objecting to, it is the indexing, even though they might be at full wages?

Mr. Thompson: That is right.

Mr. Laughren: Okay.

Mr. Thompson: To come back, incidentally, to one of your earlier questions--I was searching for a number while you were talking--they mentioned yesterday in the presentation that 85 per cent of all active paying pensions accrued to workers with less than 30 per cent impairment.

Mr. Laughren: Eighty per cent.

Mr. Thompson: Eighty-five per cent referred to less than 30 per cent, and the average level of impairment is 18.7 per cent. That is specifically in 1982.

Mr. Laughren: On page 3 you say: "The goal must be to design a system which gives a better level of benefits to those who most need and deserve financial assistance following injury at work. At the same time, we must lessen the opportunity for abuse."

10:50 a.m.

I was searching through here for where you thought the better level of benefits should be. What benefits should be better for those who need and deserve them most?

Mr. Thompson: First, as a general comment, I think the theme we meant to run through this presentation, and I would emphasize it again, is that, like everyone else, of course, we are totally in agreement with the principle of workers' compensation.

As a result of combination of things, we are suddenly being faced with a pyramiding of costs. There is inflation, indexing, the problem we suddenly face of the unfunded liability and how to deal with that unfunded liability, with a request for an increase in earnings ceilings, which is, in effect, a duplication of an inflationary factor, a whole series of increased costs.

No matter how we measure, the manufacturing industry's ability to face those costs is limited. There has to be some limit. We would all like it to be unlimited from a humanitarian point of view, but there is a limit to what we can do.

We want to make sure we provide those limited funds to the people who are truly deserving and we try to stop wasting money on those who abuse the system. In a broad way we are saying that we support those things that increase the benefits at a reasonable rate, which can be supported by industry for legitimate purposes, and that we try to narrow the opportunities for abuse. That is really the whole theme of the presentation we have made.

We have picked on some specific things we think cause abuse. We have picked on some specific things we think are an undue pyramiding of costs at this time. The things we have not picked on are the ones we agree with, if you want to take it in a broad, general way. That is the principle, and it is the abuse that is causing us the serious problems.

Mr. Laughren: You feel quite sure about that, do you?

Mr. Thompson: I do.

Mr. Laughren: As a committee, we face being in the awkward position--at least from my viewpoint; I should not say "as a committee." I always feel in any system, whether it is the way a businessman pays his taxes or claims for unemployment insurance or welfare or compensation or members claiming their expenses in the Legislature, there are opportunities for abuses. I do not know how to deal with that. I do not know how you design this to do that.

Mr. Thompson: I think it is the joint responsibility of everyone in this room at least to narrow the opportunities for abuse. When I say abuse, I do not mean purposeful abuse always. Some of it is purposeful, but an awful lot of it is as a result of sheer administrative difficulties. It is our responsibility to narrow those opportunities for administrative difficulties. I think that is what we are about here.

Mr. Laughren: I do not want to put words in your mouth, but what I think you are saying, if I hear you correctly, is that you are not so concerned about the injured worker who goes out to beat the system or abuse the system so much as you are saying the system has abuses built into it. Is that correct?

Mr. Thompson: Yes, but I am concerned about the guy who abuses it too, because he takes the bread out of the mouth of the fellow who is in real need. I think we should be concerned with that.

Mr. Laughren: In my constituency I am preoccupied with compensation problems in my office. It is almost a full-time job. I personally do not see the abuses. People come to me. I am not trying to beat the system. I am not saying I have never in my 13 years encountered people I thought did not have a legitimate claim--and I tell them if I do not think they have a legitimate claim--but the vast majority are people who, for one reason or another, are not getting justice. I have difficulty being preoccupied with abuses when what I see are legitimate claims.

Mr. Heffernan: If I may add something, I think the abuse arises in two situations, the first stage being where the person is initially abusing the system and the second stage being where you may have a legitimate entry and the abuse is the duration of the employee staying on the benefits, which is a problem.

Mr. Laughren: The employee, you would agree, is not the one who makes the decision as to how long to stay on claim. Right?

Mr. Heffernan: No. In most cases it is the general practitioner again.

Mr. Laughren: I have gone on long enough. I can recall, in the area I represent, Inco's doctor was ruling on compensation claims that affected Inco. I am sure you would not want to revert to that kind of system whereby a company doctor makes decisions on employees' compensation benefits.

Mr. Heffernan: No. There are recognized occupational health specialists now. It has been a long time coming, but there are those types of individuals around. It is starting to grow.



Mr. Laughren: It needs improvement.

Mr. Villeneuve: Gentlemen, we have been hearing a lot about problems with injuries and what have you. This is, of course, always after the fact. We have been led to believe by a group that came in yesterday, the Confederation of Canadian Unions, that the Industrial Accident Prevention Association was not doing a very good job and that probably all of the nine safety associations were not doing a very good job.

I would like your opinion as manufacturers about what sort of setups you have to prevent accidents in the work place, who has input, and basically who makes sure that the guidelines, rules and regulations are enforced.

Mr. Heffernan: I think you will find in most of the larger industries that you will have full-time occupational health and safety professionals. The IAPA will assist if it is needed, but you still have your full-time person in the facility.

It is not only the IAPA or the other safety associations in the province; there are other recognized groups such as the Canadian Society of Safety Engineering, the Canadian Registered Safety Professionals, Total Loss Control Institute, all of which are building programs for industry to use. The IAPA is there when a plant or some of the smaller industries are having difficulties and need assistance in developing a program for that plant.

I do not think you will find that the industry as a whole is upset with the way in which the safety associations have conducted themselves. It may need some reorganization, which I believe is already in process, but you have to look at the broad aspect. There are colleges and universities now producing specialists in the area of health and safety for industry. Those are the areas on which we perhaps need to put more emphasis and try to get more qualified people to develop the programs that industry needs.

Mr. Villeneuve: But obviously the people who are on site where accidents occur, the workers, do have input as much as management, and probably more than management at certain times. Of course, the accident happens at the employer's premises. However, input is definitely occurring on behalf of all the people at the work place.

We have been led to believe by a number of submissions that the culprits are basically the people who sign the cheques. Your opinion is that there is input at all stages and accidents inevitably occur.

We have been led to believe that \$26.4 million is spent in accident prevention. It is money not being very well spent, according to some people. If it is not being very well spent, where could we divert it to improve matters? What can we do as a committee faced with situations that are very unhappy? Numerous people are disabled or killed by accidents. Where can we as a committee recommend that these funds be channelled that would be more productive?

11 a.m.

Mr. Heffernan: Ontario is probably one of the most highly recognized provinces for having safety associations intact. In fact, internationally it has been recognized for some of the programs it has developed. That is not to say there is no need for improvement. The restructuring aspect will assist in some of the improvements that are needed. The other safety associations, programs and institutes that are around are also in need of assistance in trying to develop their programs and implement them in the industry.

Industry also has to increase its safety programs. I think you heard from Mr. Baird yesterday. He pointed out that there are industry groups which are trying to work together on developing programs. Our own classification of industry has worked together in producing its own health and safety programs specific to that type of industry. It is coming along. It is nothing that happens overnight. It is a long and tedious process in some cases.

Mr. Thompson: I think you have put your finger on the crux of this thing. I have operated businesses and plants at a pretty basic level, not only in Canada but in Germany and the United States. The pattern is the same everywhere. The plants with the excellent safety records are the plants where there is a real interest in accident prevention at the plant level--at the employee level, at the foreman level and at the manager level.

Whatever we do in the way of accident prevention has to be channelled into upgrading interest in accident prevention at the plant level. It works over and over again, and it fails over and over again when you do not have that interest.

As Mr. Heffernan has said, Ontario has an excellent system in place to provide safety education. What we may need is some revamping and some redirection as times change. Channelling the money into different places will not do it, other than temporarily giving us a feeling that we have done something. What we have to do is to go really actively at the ones we have now and improve them, if they need improving.

Mr. Laughren: We have been trying to get rid of that stupid asbestos act, but they will not get rid of it.

Mr. Villeneuve: I am more conversant with the farm association. We will be hearing from them a bit later this morning. I was a member of that association before being involved in other places. I know that a lot of good literature comes out which is probably taken too lightly by both the farm owner and the people who run his equipment. That is sad.

I will state another instance with the Kraft plant at Ingleside in my riding in eastern Ontario. The first thing you see as you go in the front door is, "This plant has been accident-free for X number of days." Those guys are extremely proud of that. That is the first thing you see as you walk in the door. Someone went on compensation not long ago for a week. It was not a major

catastrophe, but apparently the workers in that plant were very disappointed to see that record blemished.

You make employees conscious that they are the ones who stand to be injured or not to be injured. I realize that management is partly responsible, but I put a lot of responsibility on the people who work in the work place.

Mr. Thompson: While we talk about the accident prevention associations, I think one of the most underestimated and least recognized parts of accident prevention is the programs carried out at plant level by joint co-operation of management and employees. There is much more of that going on than many people give us credit for.

Most plants today have an active safety committee composed of both employees and management. It is fostered by management. As I said earlier, it may be partially enlightened self-interest and partially humanitarianism. The employees participate actively in it. It is one of the most effective things we do. We simply have to do it better.

Mr. Chairman: There are three more members who wish to ask questions. I should have split the time earlier in the day, but I did not. If we were to go until somewhere around 11:20 or 11:25 with this group, that will split the time pretty well evenly between the two groups because of the fact that we did not quite start on time this morning. I would ask the members to govern themselves accordingly.

Mr. Lupusella: There is something I agree with in the contents of your submission, which is the principle that there is a need to give more money and more justice to the severely injured workers; we do not have any disagreement on that. The only difference is that the best way to deal with this problem is to try to detect the bad apples, and I do not want to make any comment on that particular aspect.

Are you of the opinion at this point that without Bill 101 the severely injured workers of the past have received, and in the future will receive, justice from the board in relation to the level of benefits in relation to the level of permanent disability, or do you think they should have received more money?

Mr. Thompson: I do not know that I can answer that as well as some of the professionals involved with the board can, but I think within our limits to carry costs, and compared to other jurisdictions, they are being well looked after, about as well as anyone would ever want them to be.

Mr. Lupusella: Of course, I disagree with that statement, even though you realize that if a person has an amputated leg, he should be thoroughly compensated by the board. We are talking about clear-cut cases of injuries in which there is a clear determination that the injury was severe and is supposed to get right, fair and just compensation. Do you disagree with that?



Mr. Thompson: No, not really.

Mr. Lupusella: What makes me nervous about the content of presentations coming from the private sector is the fact that they relate the level of benefits to the costs of employers across the province, and they say that fair compensation should be given just to people who deserve it. My particular concern is that the most severely injured workers across the province are treated in the same way as the ones you mentioned who are abusing the system, if there are any, and that is what makes me nervous.

Do you not think it is time we reshaped the Workers' Compensation Board in such a way that the severely injured workers, the cases in which there is clear-cut evidence of severe injury, get right, fair and just compensation in Ontario? Do you disagree with that position?

Mr. Thompson: No, and to the extent that the system is capable of affording it, I think that is exactly what is being done.

Mr. Lupusella: You cannot have it both ways, with great respect. In the past the employers never complained in Ontario, because the board was a good, cheap insurance scheme for employers across the province. Now that we are trying to strike a balance between injured workers and employers, the employers are screaming about this process, and that is what I do not understand. That is why I will never understand your position, even though you emphasize the principle that there is a need for change. Now where do you stand?

Mr. Thompson: I must say I am not sure specifically what you are referring to.

Mr. Lupusella: Do you disagree with me that the Workers' Compensation Board for the last 70 years has been a cheap insurance scheme for the employers across the province?

Mr. Thompson: No, I do not.

Mr. Lupusella: You do not disagree?

Mr. Thompson: I do disagree. I do not think it has been a cheap insurance scheme.

Mr. Lupusella: It has been.

Mr. Thompson: I think it is a practical system that is constantly in need of re-examination, as we are doing here today, and it has to remain within what is a practical cost for the system to bear.

11:10 a.m.

Mr. Lupusella: You are dismissing the content of your submission, with great respect. You are concerned about cost, and you have been attacking the level of benefits as over-generous to injured workers. Why do you not tackle the issue of cutting



injuries and cleaning up work places across the province to reduce the assessment for the employers, which means the system can afford to give more generous awards to people who deserve them as a result of industrial accidents?

Why do you not tackle this issue instead of tackling the cost and reducing the level of benefits, which will put businessmen in a situation near bankruptcy?

Mr. Thompson: We were invited here today to comment specifically on some changes to Bill 101, and that is what we have been doing.

Mr. Chairman: I think that is a fair answer.

Mr. Lupusella: It is a fair answer, Mr. Chairman, but they have been talking about cost, making reference to the cost of Bill 101.

Mr. Chairman: I think the delegation has suggested it would much rather see employees working than off on compensation.

Mr. Lupusella: I want the delegation to be aware of my personal feelings about the whole WCB situation. You have tackled the issue of permanent disability awards. You have said a lot of people receiving permanent disability awards are going back to work and therefore the supplement pension, where there is no wage loss, should not be granted by the board because there is no wage loss.

I am sure you were talking about existing claims and you were not making reference to the injuries that will be covered under Bill 101. You talked about all the injuries and all the injured workers who are currently receiving permanent disability awards.

Are you aware that under the present system when the injured worker receives compensation or benefits from the WCB, he is already losing 25 per cent of the benefits because of the formula adopted by the board on assessing the level of benefits? I am sure you are aware that the level of benefits is based on 75 per cent of the average earnings in the last four weeks before the accident took place, so the injured worker is already losing 25 per cent in the calculation of the level of benefits.

Mr. Heffernan: Do not forget that is tax-free.

Mr. Lupusella: Yes, but a lot of people with low incomes eventually do not pay taxes to the federal and provincial governments anyway; so they are losing 25 per cent. Maybe you are referring to people who earn \$18,000 to \$20,000; they get into a certain income bracket where they are supposed to pay a lot of taxes to the federal and provincial governments.

Let us talk about people making \$8,000 or \$9,000 a year, who eventually, if they are married, are not supposed to pay taxes to the federal and provincial governments. They are already losing 25 per cent on the assessment of the level of their weekly benefits.

Are you aware of that? Do you disagree that they are losing money under the present system?

Mr. Morrison: What has his disability to do with the fact that he is earning \$8,000 or \$9,000 base salary right now?

Mr. Lupusella: With the supplement pension. There are a lot of people who have never been involved--

Mr. Morrison: Where he has a pension on top of no wage loss, the pension should not be indexed.

Mr. Lupusella: I am trying to explain to you that when injured workers, even those receiving a permanent disability award, go back to work, they are already losing money on the formula adopted by the board at present. They are losing 25 per cent on the calculation of their average weekly benefits.

Mr. Thompson: I think you are misinterpreting what we said here. We did not say people should lose the partial disability pension if they go back to work. We said it should not be indexed.

Mr. Lupusella: Why should it not be?

Mr. Thompson: Because they are back at work and making the same salary as someone else working at that job.

Mr. Lupusella: If I have three fingers amputated, even though the board considers the amputation of three fingers as almost no injury at all--if you know the clinical rating system, how it works and how pensions are granted to injured workers--for me, it is a severe disability. For others, it may not be. For the board, it is not a severe disability because if you see the clinical rating system, the percentage of disability is extremely low.

Why should these people not get a supplementary pension when as a result of the amputation of their fingers they have lost the capacity of improving themselves in the marketplace to find better opportunities for better jobs?

Mr. Thompson: We have not said they should not get a partial disability pension.

Mr. Lupusella: --of indexing.

Mr. Thompson: That is right.

Mr. Lupusella: At any rate, you have been tackling the issue of money, which in your opinion is well spent by the Industrial Accident Prevention Association. At the moment, they have a budget of \$28 million. Do you have something against the principle that employers should pay half an hour of the worker's salary to be spent on education in the work place to have consultants come in, experts in the field, to analyse the work activities of each plant, give recommendations to the employers and educate the employees about risk, to eliminate injuries and clean up the work place?

This is a good investment for employers across Ontario and would reduce their assessment in the long run. Do you have something against this principle?

Mr. Heffernan: Under the Occupational Health and Safety Act's internal responsibility system, it is management's responsibility to train and educate supervisors and, in turn, the responsibility of the supervisors to educate the workers. As long as we are responsible for it, we have to maintain that.

Mr. Lupusella: Why then is there a need to spend \$28 million of employers' money across Ontario for something which as far as I am concerned is not fruitful in the sense that it did not reduce the rate of accidents across Ontario for so many years? The trend has been going up and down, in the range 300,000 new claims filed with the board on a yearly basis. Do you think that \$28 million was well spent?

Reading the content of your brief, you are quite satisfied with the work that has been done by the IAPA.

Mr. Heffernan: As far as the employers are concerned, they welcome the assistance that IAPA and the other safety associations have given towards trying to assist in educating our supervision which, in turn, educates the workers.

Mr. Lupusella: You said that under the Health and Safety Act that is in place in Ontario, there are already committees looking after the safety of workers in co-operation with management. Do you not think the IAPA is duplicating their work, or do you think you are quite satisfied with this price tag of \$28 million to be spent for something which as far as I am concerned is not extremely useful?

Mr. Heffernan: That is \$28 million for nine safety associations, I believe.

Mr. Lupusella: I realize that.

Mr. Heffernan: In any information we have had from employers that utilize their services, we have had very few complaints.

The Vice-Chairman: We must remember our time frame here. We must be through before 11:30 a.m., and we have two more people on the schedule.

11:20 a.m.

Mr. Haggerty: My question is related to page 7, clarifying the board's authority to finance training programs. It says the revised section 24 of the bill authorizes the Workers' Compensation Board to extend financing for health and safety education. We have been on this topic just recently. It relates to the Industrial Accident Prevention Association. I think they do provide an excellent opportunity to employees and employers to participate in safety programs within the industry.



Perhaps we should be looking at another area where money should be spent or funded, and that is to start educating our young people in the schools in the values of safety, whether in the home or in industry, particularly in the high schools and the colleges. The automobile driving safety courses have been excellent programs in the secondary school system in Ontario. They have been successful and have reduced the number of accidents involving young drivers.

Although we have programs today with particular reference to the occupational health section for employees involved in certain health hazards in Ontario industries, there are many workers today who are working with hazardous materials who are not given the true picture as to the possibility of causing health problems. About all I have come across is that the employers give them the code name of a toxic agent that they may be working with, but not saying what the components consists of.

One area in which the Workers' Compensation Board and the Ministry of Labour should be providing educational programs is at the early stages in the secondary school system and in the colleges. There is a great need to bring about awareness of safety in working conditions in Ontario and to improve the work place. The best place I can think of to start is in our school system.

I do not know whether anybody has made any suggestions on this matter, or whether the Industrial Accident Prevention Association or the Workers' Compensation Board has moved into this area.

Another area is to start a course in first aid. The secondary school system is a good place to start. That makes the person aware of the problems that may be encountered by the work force in the province.

One good place to start spending some money is in our educational system. Make work safety a credit in the secondary schools--safety even in the home and in the farming community. I suggest that is what we should be looking at.

Mr. Gillies: Mr. Haggerty, the existing safety associations are doing some work in the schools now, but I think it is very important and I am sure our delegation is aware that a safety advisory council has been struck at the board, a three-member board made up of one representative of labour, one representative of industry and one neutral third party. That council is going to be exploring this whole area as to how we can improve and focus the safety programs.

I read on page 7 of your brief of the concern you had about the extension of the board's authority to fund programs. I want to assure you that the ministry's intention is that this funding be used for no other purpose than focusing on safety programs. If the wording is a bit vague in that regard, I want to assure you that the implementation will be not be.

We can see some legitimate concerns, for instance, on the part of certain labour unions that would like to sponsor programs



of their own. We intend that the board have the capacity to allow them to do that, but we are talking about safety programs and not seeing funds diverted into other areas.

Mr. Thompson: On that score, that is exactly the point we were driving at. We have to be careful that those funds are not spent in any narrow way. Otherwise, we would begin to get employers saying, "Why should we have the funds diverted there rather than directly to my program in my plant run by management?" The beauty of the safety associations is that they are above political bias or specialized bias, and I think that is where we have to be very careful.

As to the limited funds that are available--and I agree with Mr. Lupusella that the funds available for the education part of the board's work are limited--we are better to spend them in a focused way on an existing structure than to start spreading them out over a broad franchise that may simply dilute them to the point where they are not effective.

Mr. Gillies: I appreciate your concern. My hope would be that if the Canada Safety Council does its work effectively, through a better co-ordination and utilization of the available funds, we should not really have to see a gross increase in that area of funding to perhaps achieve a better use of the money available.

Mr. Heffernan: The other thing we were concerned with was the fact that we would be funding an additional safety association, which is something we do not feel is necessary.

Adding further to your comments on safety education, there are programs being developed now, with the Canada Safety Council, for education programs in secondary institutions. It is starting and I agree it is something that we should place emphasis on.

Mr. Chairman: I thank you. Now, Mr. Watson, very briefly please, if you can.

Mr. Watson: I want to deal with the spousal provisions for remarriage. I asked this yesterday and I guess I can talk out of both sides of my mouth on it. You differ from the legislation. You say the benefits for a spouse should be cut off on remarriage.

The problem we get into is--what was the answer yesterday--small-town Ontario. Everybody believes in that and that is great; I believe in that too. The trouble is there are a few people who do not live in small-town Ontario and they cheat.

Mr. Thompson: You mean people in small towns do not cheat?

Interjection: Not as much.

Mr. Watson: You know whose cheque is good and whose husband is not. Anyway, it is a problem when the board is then forced to start to rule on who is cohabiting and who is living together or sort of living together, that kind of thing, and who is jeopardizing the system.

From the Workers' Compensation Board, the government's point of view, one of the only ways out is to say, "Okay, we are going to continue the spousal benefits after remarriage." It is one of the points that bother me. You come down hard on the one side and the bill comes down on the other side. There is not much room for compromise.

Mr. Thompson: I do not know that we are really complicating the board's job. They have already faced that terrible dilemma of whether or not it is a spouse the first time around. The remarriage part of it is pretty clear-cut.

Mr. Watson: Yes, I agree.

Mr. Thompson: I do not think that part is hard to define. The hard part is--

Mr. Watson: There is the problem. The person who remarried loses the pension but the person who just cohabits from there on says, "If we formalize this thing, I will lose my pension." You penalize the people who are honest. I do not think you have an answer for it.

Interjection.

Mr. Watson: That is not the problem.

Mr. Chairman: Okay, I thank the delegation for appearing before us. The information in your brief will certainly assist us in our clause-by-clause discussion of the matter when we come back in September to address it. Thank you ever so much.

Mr. Thompson: We appreciate the opportunity. Certainly the CMA is most anxious to help in any way it can to make the thing work in the future.

#### ONTARIO FRUIT AND VEGETABLE GROWERS' ASSOCIATION

Mr. Chairman: The next delegation is from the Ontario Fruit and Vegetable Growers' Association. It is exhibit 24, with a white cover and red binding that was handed out this morning. Gentlemen, whenever you are ready.

Mr. Fisher: Mr. Chairman, I am Peter Fisher, vice-president of the Ontario Fruit and Vegetable Growers' Association.

First, I would like to make a comment that the farmer likes to make hay while the sun shines. I can see there might be a bit of a problem if we have to sit around discussing some of these matters longer than scheduled, but regardless of that, the farming community has come out today and I would like to introduce to you the people who are here today to express our concerns.

11:30 a.m.

From the Ontario Fruit and Vegetable Growers' Association, Renie Long, John van der Zalm and Mike Mazur; from the Ontario

Federation of Agriculture, Doug Avery, Brenda Ward and Susan Johnston; from the Christian Farmers Federation of Ontario, Elbert van Donkersgoed; from the Farm Safety Association, Jim Gibb and Jane Reed; from the Ontario Cattlemen's Association, Morley Weatherall; from Landscape Ontario, Robert Cheeseman and Paul Hetherington; from the Ontario Poultry Council, George Underwood; from the Ontario Pork Producers' Marketing Board, Adrian Vos; and for support, from one of our townships, the township of Zorra--everybody knows where that is, of course--

Mr. Chairman: They were the great tug-of-war team that I saw in the Cambridge Highland games on Saturday.

Mr. Fisher: --Wallace Hammond, mayor, William Smith and Lorne Walton, councillors.

Mr. Chairman: Thank you for those introductions.

Mr. Fisher: Would you like me to read this?

Mr. Chairman: Whatever you prefer. If you would like to read through the whole brief, we will ask questions later.

Mr. Fisher: Perhaps that would be best.

Mr. Chairman, the farm community is pleased to have this opportunity to submit its views on amendments to the Workers' Compensation Act and related issues. According to the Farm Safety Association, about 25,000 farmers pay assessment to the Workers' Compensation Board. These farmers include both those who pay premiums for their workers and those who take out coverage for themselves.

The three farm rate groups paid more than \$16 million in assessments in 1983. It is not clear how many workers are covered under these assessments. However, based on Statistics Canada 1981 census data, there are about 16,500 year-round paid workers on Ontario farms. Almost 862,000 weeks of seasonal labour were reported from 26,800 farms. Unfortunately, we cannot translate these weeks of work into numbers of people with any great degree of accuracy.

Farm workers are not covered by the Labour Relations Act and, therefore, there is no provision for them to unionize. Farming is also exempt from the Occupational Health and Safety Act. Farmers and their workers do, however, have the Farm Safety Association which plays a major role in educating farmers about the dangers they may encounter in their day-to-day operations and how they can improve the safety of their farms. The Farm Safety Association is, of course, financed from Workers' Compensation Board assessments paid by farmers.

Due to the economic difficulties experienced by many farmers in the past few years, farmers have become increasingly cost conscious. WCB premiums have increased in 1984 by 15 per cent for the rate groups 876 and 943 and seven per cent for the rate group 953. The rate of increase is expected to be high for the next several years in order to bring the unfunded liability down for



those rate groups. It is not always possible to pass these increases along to buyers of our product.

The amendments to the act will increase the cost of the WCB assessment for farmers. According to the WCB actuary, the change in survivor benefits will likely have the most impact. We are not opposed to changes that increase costs if they provide increased benefits to workers and farmers, as the change in survivor benefits would.

It is desirable for the wellbeing of the industry that the increased costs be phased in gradually. We are opposed to changes that may increase costs without providing benefits to rate groups that pay part of the cost. We are referring here to subsection 24(3) of Bill 101, which would amend powers of the board to include the ability to "undertake and carry on such investigations, research and training and make grants to individuals, institutions and organizations for investigations, research and training in such amounts and upon such terms and conditions as the board considers acceptable."

This would allow the WCB to provide funds to groups other than safety associations to finance programs. The immediately obvious users of this section are labour unions. It is also possible that the Ministry of Labour will be able to receive funds under this section.

The Ministry of Labour already receives funds from the WCB under section 12 of the Occupational Health and Safety Act. This allows the ministry to receive a basic amount of \$4 million, increasing by up to 10 per cent per year. According to the 1982-83 public accounts, the Ministry of Labour received \$4.8 million. Each rate group pays a proportional share of this cost. Farming, as mentioned, is not covered by the Occupational Health and Safety Act, even though it pays its share of the cost. Any funds flowing to the Ministry of Labour from this new amendment would similarly be paid partially by farmers, even though farmers and their workers would not receive any benefits from the use of these funds.

The dollar amounts involved may be small, but the principles are important. Farmers pay for programs that do not apply to them or their workers. Funds are moved from employers to the Minister of Labour. Ministries have traditionally been funded from income tax revenue collected from society, including business as a whole. Financing ministries through the WCB assessments amounts to a back-door tax on business. It is not a tax based on income but a tax based on labour payroll.

In our view, this represents a major shift in the philosophy of fair taxation. The potential ramifications of such a shift away from taxation based on the ability to pay should be discussed fully by legislators, employers and other interested groups. Funds that may be used to finance union programs will also be partially paid for by farm employers, though farm workers are not unionized. We object strongly to paying for a part of these programs.

Since farming is not currently covered under the Occupational Health and Safety Act or the Labour Relations Act,



the farming community asks that our share of WCB funds being diverted for programs under section 12 of the Occupational Health and Safety Act or subsection 24(3) of Bill 101 be given to the Farm Safety Association to enable it to expand the services it offers at present to the farm community.

A related area where farmers are afraid they are losing influence over issues that concern them is the area of policy control over safety programs. As mentioned above, the Farm Safety Association is financed through assessments paid into the WCB by farmers. In the past, the FSA has operated with a great degree of autonomy in designing safety programs that suit farm needs. The FSA has a board of directors composed of 19 farmers representing a wide range of commodities and geographical areas. This board has the ability to keep the FSA's policies and programs in tune with the needs of the agricultural community.

The FSA has developed working relationships with many agricultural groups. The 4-H clubs have set up safety clubs. Safety courses are offered through the FSA at eight agricultural and community colleges. Various activities and programs are offered in conjunction with the Junior Farmers' Association of Ontario, rural school boards, the Ontario Ministry of Agriculture and Food, local farm safety associations and the Ontario Retail Farm Equipment Dealers' Association, among others. Through these co-operative efforts the FSA, with relatively limited financial and manpower resources, has been able to reach a large part of the farming community with its programs.

The recent restructuring of the WCB, with the imposition of a tripartite administrative authority and a joint policy review board, had left the farm community in doubt as to the status of the FSA under this new structure. There is concern that safety policy will be determined at the board level with implementation delegated to the safety associations. If this happens, there is no assurance that the farm community will have any significant input into the policy process.

The needs of the farm community differ from those of other business groups. We are, for example, the only group where the children are raised in the work place. Safety education has to be as much directed at the family as at the hired workers. We want the Farm Safety Association to continue to be able to design and implement its own safety program and will resist any attempts to reduce the FSA's current autonomy.

11:40 a.m.

The Ontario Task Force on Health and Safety in Agriculture was set up in 1983 to determine the areas in which agriculture workers need health and safety protection and to suggest ways in which it can be provided. It is possible that this task force will make recommendations about the role of the Farm Safety Association.

In our view, if there are any indications that the association's role in safety education should be changed, this change would have to be in the direction of strengthening and expanding its current mandate. Certainly its ability to develop

and deliver programs should not be impaired in any way. In the light of the current task force, no changes should be made that will affect the Farm Safety Association's status, policies and programs until the task force has made its report next year.

Another aspect of Bill 101 on which we would like to comment is section 32, in particular the establishment of the office of employer adviser. In general our response to this is favourable. However, we would like this body to be outside both the Workers' Compensation Board and the Ministry of Labour; in other words, it should be an independent office reporting directly to the Minister of Labour. The Ministry of Labour is seen by employers to be employee oriented. Separating this office from the ministry would provide it with more credibility in the eyes of employers.

Farmers are a relatively small group, accounting for about two per cent of the Workers' Compensation Board assessment income. However, both family and nonfamily hired labour are important inputs in the operation of the farm. Thus, changes to the WCB are a concern to our industry. We trust that this committee will consider fully the concerns we have raised for our industry.

Mr. Chairman: Thank you very much. We have several members who wish to ask questions.

Mr. Watson: Mr. Chairman, I want to thank this group, particularly the large representation from the farming community, because this is one of those days on which you can make hay.

I want to question you on the problems of workers' compensation as they concern rates of remuneration for self-employed people. It used to be a problem. Is it still a problem for the farmer who is not on a salary? The family lives on the family income and, when it comes to the assessment rate, it is a problem.

It is all right if you happen to be organized as a farm corporation where people are paid salaries out of the corporation; that becomes simple. But I am thinking of the self-employed farmer who sets his own remuneration level for workers' compensation purposes. Is that a problem?

Mr. Fisher: I do not believe it is a problem; I am not aware of its being a problem any further, because a specific amount is required to be put in by the employer as the rate at which he will be paying compensation. There are minimums and maximums, and I am not exactly sure what they are right now; I do not have an employer report form. But he must establish that when he sends in his annual statement of assessments.

Mr. Watson: One of the concerns we have heard from other groups concerns the raising of the limits. You did not address this in your brief. Did you discuss whether or not you should, or was that not a concern? You would love to tell me there is not enough money in agriculture that you are going to worry about that, but it might be a concern with respect to the rates you have to pay or the amounts of assessment that would have to be paid for you and your employees.

Mr. Fisher: I am sure that is a concern, but it is not a key concern, because probably it does not affect our group of employers as much as some other groups; but certainly it is a concern.

Mr. Watson: You have spent quite a bit of time, and I appreciate why, on the Farm Safety Association and the frustrations of any safety group that has to deal with the agriculture industry. You have made the point, and I would just like to amplify it, that there are many problems.

One, for instance, is time itself. When it is time to harvest or time to plant, the hours that some farmers put in lead to fatigue. You have to run machinery; you have to deal with chemicals. There are just so many variables.

I take it that you are reasonably satisfied with the Farm Safety Association. I would also take it that it is, in a way, a compromise. Unless you have a fleet of inspectors going around to inspect that every power takeoff shield is in place or some such thing, you will never accomplish having a really safe farm.

Mr. Fisher: One of the main themes is to try to make all people in the work place aware of the hazards. That is probably our first and biggest job.

Because of the pressures, as you say, of making hay when the sun shines or whatever it may be, there is a tendency to forget about those hazards. That is definitely there. A lot of work is being done to try to expand in relation to those kinds of pressures, particularly for the small farmer who is not even an employer, but is just a small farm operator who really feels those pressures. The crop is there and he is the only man. He will get it in; that is all there is to it.

Mr. Watson: I have a comment rather than a question. Everything is relative and you could always go further. One of my first jobs was to take part in a farm safety survey back in 1959. It was really the forerunner of the Farm Safety Association. The farm groups have come a long way since their beginning with a small grant from the Department of Agriculture and Food at that time to where the Farm Safety Association became financed through the Workers' Compensation Board.

I am pleased to hear the farm groups say, "We think they are doing a reasonable job and we are getting our money's worth in the farm community." All I can say is that I would hate to see it cut back. It is one of those industries--how do you impress and train people? It is frustrating from your standpoint, it is frustrating from the government's standpoint and it is frustrating from the board's standpoint.

Mr. Sweeney: You suggest on page 5 of your brief that the Farm Safety Association's autonomy in determining the kinds of programs and thrusts it wishes to take could be in jeopardy, that somebody else could start calling the shots. How do you arrive at that concern? Is there something specific in the bill that draws



you to that conclusion or is it a sense that there is an overall direction that way? What is it?

Mr. Fisher: Actually, in this area we were not specifically speaking about the bill, but about the restructuring of the Workers' Compensation Board.

Mr. Sweeney: The new corporate board, that type of thing?

Mr. Fisher: Yes, and the two suggested areas of direction that the board is putting into place, the joint policy review board and the tripartite administrative authority; those two groups. It is very questionable, first, that farmers would ever have any membership in that group and, second, that the overall policies they would be suggesting would really have a direct bearing on the Farm Safety Association and its operation.

Mr. Sweeney: I understand your concern that you may not have as much input into the operation of the board as you would like to.

Mr. Fisher: No, we do not want any input in the board.

Mr. Sweeney: I understand.

Mr. Watson: You are not so sure you do not; be careful.

Mr. Fisher: It is the last thing we want.

11:50 a.m.

Mr. Sweeney: Talk about the understatement of the year. On page 5 you seem to be suggesting that the area where you currently have a great deal of input, the Farm Safety Association, is in jeopardy. I am not sure how, in this legislation, there is anything that deals with that. If there is, I would like you to point it out to me.

Mr. Fisher: The legislation has given the Workers' Compensation Board the power to disseminate funds through that one section of the act, "to undertake and carry out such investigation and research," etc.

Mr. Sweeney: Okay.

Mr. Fisher: The Workers' Compensation Board, in order to facilitate this, has set up, within its own jurisdiction, the two bodies to which I referred.

Mr. Sweeney: How does that affect the Farm Safety Association? That is the link I cannot see; help me see that.

Mr. Fisher: I am not sure if it was you but during the previous discussion I heard someone say there was \$28 million that would be not necessarily expanded but redistributed.

Mr. Sweeney: That is money that is presently allocated to a whole series of safety associations.



Mr. Fisher: That is correct, the Farm Safety Association being one of them.

Mr. Sweeney: Right.

Mr. Fisher: I understood that these groups would either have the ability to spend more money or else reallocate the present funds, and that is where our problem comes in.

Mr. Sweeney: That does not deal specifically with this legislation, though.

Mr. Fisher: Not specifically with the legislation. It is a restructuring of the board that is a concern, but the legislation does give the board that power.

Mr. Sweeney: Yes.

Mr. Fisher: So that is where the two were tied in.

Mr. Sweeney: Okay, I am following you now.

Mr. Watson: Could I have a supplementary on that one?

I think that this particular aspect could be turned to the farm community's advantage because, if there are a whole lot of accidents coming in on one specific cause, be it a tractor or something else, the Workers' Compensation Board could then direct research into fixing that problem. This thing that you see as a disadvantage could probably be an advantage also.

Mr. Fisher: You can take it how you like, but I just wonder what kind of influence the farmers would have on either of those committees.

If we are dealing with the Workers' Compensation Board, perhaps we might have some influence, but what if we are dealing with the two committees that are suggested to be set up there, neither one of which has a great deal of concern for the agricultural work place and are trying to solve their particular problems, which they should be working for?

Mr. Watson: I see your point. The other side of it is that, if there are records coming in which show there is a certain correlation of accidents to a specific cause and it is going to take more funding than the Farm Safety Association gets to look at that, I think the Workers' Compensation Board would be pointing at something and saying, "We have a frequency of accidents here with a certain machine or a certain type that is obviously out of line," and would go to the Farm Safety Association which would say, "We are spending all the money we have now, we need some research on this," the powers there would give them more money.

I agree with your other concerns, but it would also work both ways.

Mr. Avery: Mr. Chairman, there is a very general comment that I would like to make which is all part and parcel of our

concerns with respect to the Workers' Compensation Board, our concerns with respect to the Farm Safety Association and the Occupational Health and Safety Act.

Back in the corner to your right is my eldest daughter, Colleen, who is with me today to view the proceedings. Colleen and the rest of our children are being raised in the farm work place. We have a large industry where all of the family members are literally raised from infancy to some age in the work place. This differs dramatically from the majority of the other businesses with which you have come in contact during the hearings.

The Canadian Manufacturers' Association was here at these microphones just a few minutes ago. They were talking about a work place which is defined by fences and perimeters and so on, a relatively small place, such as this is your work place for today; it is very easily defined.

My work place at home is not defined in nearly the same context. We are running three separate parcels of farm property. We have employees on all three parcels of that farm property today. It is an entirely different situation. Agriculture is unique in the fact that the family is raised in the work place and the family contributes so much labour to the operation of the farm and the whole concept of what actually is the farm work place.

We think there is a very vital role for the Farm Safety Association to play in an educational program for myself as an employer, for my daughter as a daughter, as well as all the employees we have on our farms. Although the legislation as presented does not necessarily reduce the autonomy of the Farm Safety Association, we have some concerns resulting from the legislation that it may reduce this.

If anything, possibly there is justification to double the level of assessments or the funds that are relayed to the Farm Safety Association to help it with its programs in view of the uniqueness of our industry.

Mr. Sweeney: You seem to be placing a lot of confidence in the Farm Safety Association's ability to help you deal with your safety problems. Yet, my understanding is that even today the farm is one of the most dangerous places to work. The rate of accidents per capita, per the number of people involved in the enterprise, is near the top.

I do not know that much about farm operations. It has been a long time since I worked on a farm. I was a kid. But surely what is happening now is not solving your problem. You still have a very high rate of accidents. There has to be some other way to deal with it.

I understand the kinds of comments Mr. Watson referred to earlier. You work very long hours. There can be weeks on end when the weather is good and it is harvest time or planting time or whatever. You are dealing with chemicals which are potentially highly toxic. I recognize all that, but the farm is still a very dangerous place to work for a lot of people.

What I am reaching for is that it would not seem to me from the results that the Farm Safety Association is meeting your needs. Why do you sense that it is doing that? What evidence do you have? There has to be another way. That is what I am reaching for. I am not doing it very well.

Mrs. Ward: The Farm Safety Association is doing as well as it possibly can with the limited budget it has. It all rolls into the concern we have, which Doug mentioned. We need to double the amount of money available.

We are doing an effective job in the schools and through the 4-H clubs and whatnot, but it can go even further--to farmers' programs on chemical control and the effects it has on us being available before we get out into the field. Because we are such a small minority we are afraid we will get lost in the flow of the other labour people.

Mr. Sweeney: Are we talking about more of the same? Or do you have some recommendations--

Mrs. Ward: Expanding.

Mr. Sweeney: --dealing with the issue in an entirely different way which could be more effective?

Am I being unduly harsh in my comments?

Mr. Avery: No, I think your comments are quite justified and, generally speaking, quite correct. At this time about \$610,000 is allocated to the Farm Safety Association. I could be out slightly on that number. There is \$610,000 for them to spend on safety education for farmers and farm employees in Ontario. That is out of the \$26 million you heard mentioned in the previous presentation.

Out of that there is a head office to support in Guelph and five or six safety consultants whose responsibility is the entire province. They are obliged to serve approximately 80,000 farm businesses, even though only 25,000 of us actually contribute to the WCB.

12 noon

Many of their efforts over recent years in attempting to work through 4-H clubs, the public schools, and through a number of farm groups are paying a certain amount of dividends to the farming community.

Yes, the accident figures are high. Yes, we have to have some shifts in ideas or expansion of ideas and programs to attempt to hold the line or minimize the number of accidents that have occurred. The present study that has been commissioned by the Minister of Agriculture and Food (Mr. Timbrell) and the Minister of Labour (Mr. Ramsay), the Richards study on occupational health and safety, as we commonly know it, will bring out some of these innovations. Our own organization is preparing a very elaborate brief. We are not prepared at this time to go into some of the



details and suggestions we are going to make, but I think they will help to address the concerns you have raised.

Mr. Sweeney: On page 7 of your brief you make reference to the office of the employer adviser and indicate that you would prefer to see it operate outside both the WCB and the Ministry of Labour. In a rural community such as you people represent, where would you like to see it placed? How would it operate?

For example, in the urban centres it has been suggested that it could operate out of the legal aid clinics. Some of the injured workers' associations have already made that recommendation to us. It would not seem, to me anyway, to be very practical for you people in the rural communities to operate that way. Would it be? Do you have some other observations? You are telling us what you would prefer it not to be, but you are not helping us to decide what it should be. That is the decision we have to make.

Mr. Fisher: Do you have an answer to that, Doug?

Mr. Avery: Very quickly, I could say there are a number of office structures in the rural communities. We are not talking about the 300 or 400 population centres, but about major centres such as Stratford or Brockville, which is my home town and is readily accessible to the rural county of Leeds and Grenville. They have office facilities and bureaucracies that this office could be a part of, yet seem to be separate from the Ministry of Labour and the WCB.

Mr. Sweeney: You do not have any objection to it being in a government office building, but you do not want it to be administratively attached to one of the two units you describe. Do you want it to be totally independent or attached to any other administrative unit?

Mr. Avery: Obviously, there are some financial considerations to being a separate unit as opposed to being a part of an existing structure.

Mr. Sweeney: Precisely.

Mr. Avery: The concern that is expressed in this paragraph is to allow the office of the employer adviser to have credibility in the eyes of the rural community. It would be best if it is not under the shingle of the WCB.

Mr. Sweeney: But you also include the Ministry of Labour.

Mr. Avery: Many of the people in the farming community do not distinguish a great deal of difference between the Ministry of Labour and the WCB.

Mr. Sweeney: My last question concerns the comments you made about your family. Please excuse my ignorance. I probably should know the answer, but I do not. When your children and spouses, either male or female, are working on the farm but are not "paid employees," are they covered?



Mr. Fisher: That is a good question. Basically, they are covered if there is any remuneration at all.

Mr. Sweeney: For my personal education, how do you do this? Do you make a small book entry?

Mr. Fisher: Can anybody help me with this question? I need some help.

Mr. Chairman: Mr. Sweeney, why do you not ask Mr. Cain from the WCB that question?

Mr. Sweeney: Okay, I looked in the wrong direction.

Mr. Cain: Spouses are not covered, regardless of payment. Across all industry, assuming there is an owner of an operation whose spouse also works in that operation, the spouse must request personal coverage to be covered under the Workers' Compensation Act.

In terms of the children, provided they are being paid something more than the child might expect to receive as a child of the farmer and his wife, as long as those children are being paid a stipulated amount of money for the work they are doing, they are workers.

Mr. Laughren: Regardless of age?

Mr. Cain: Regardless of age. There is a stipulation in the Workers' Compensation Act that, regardless of the child's age, he is covered. Whether or not there is another segment of government that is concerned about a child being employed, we cannot use that reason not to pay compensation. If he is being paid, he is doing something in industry, and if he is injured, we will compensate that child. But the child has to be receiving remuneration for work being performed.

Mr. Avery: A great number of farm employers or farm owners will regularly pay their children a stipulated wage for work performed on the farm, and it is more than just an allowance.

Mr. Sweeney: Let me phrase my question slightly differently. Has this particular aspect of coverage been a problem for your communities? If it has been, do you have some suggestions for us?

Mr. Fisher: I am unaware of its being a problem.

Mr. Sweeney: If it ain't broke, let's not fix it.

Mr. Watson: But the problem again is with the figures Mr. Avery gives, according to which you have only 25,000 of the 80,000 farmers covered. To go back to my original point about the self-employed people, from a legislator's point of view, if those are the figures--and I have no reason to believe they are not right--then we have 60,000 people out there who are working in an industry that is unique.

Many farmers in the farming industry are like employees in another industry. A self-employed person really is the employer and the employee all wrapped up in one person in so many cases. These people are not covered, and as a legislator I have some concern. I would think it would be a concern that we have 60,000 people out there running farms and, if they get their arms or legs cut off or something else, there is no support program for them.

Mr. Fisher: If I could just speak on that issue, the community and the Farm Safety Association work together very closely. The rural community and the Farm Safety Association have county organizations, and these people--as many as we can incite to come--are part of it and have input into our programs.

I just want to make one point on your previous question on what we are doing to make changes. The Farm Safety Association started realizing that the problem of the pressures on the farm community and what is happening in the farm community is a lifetime, a generation of problems. We started with an elementary school program in the rural communities that is quite unusual and has had tremendous support from a lot of county groups and county boards of education. In it we are giving children that kind of information right from the beginning.

It is going to take a number of years for that kind of program to show in our statistics as being of any advantage, but certainly those are the kinds of things where we work with the whole community, regardless of whether they are employees, employers, employees' children or even somebody else who might be in the work place as a guest. We are trying to educate those people about the kinds of problems there are.

You talk about the hazards. We are well aware of them, and we are well aware that so many of our problems are not with the farmer and the farm manager and employee but with the individual farmer.

Mr. Chairman: We still have several questions. Can we move along?

12:10 p.m.

Mr. Laughren: I want to ask the group whether I am reading its brief correctly in saying that you are nervous the assessment money you pay could be diverted, for example, to fund union organizations, even though you are not covered under the Ontario Labour Relations Act, and to provide funding under the Occupational Health and Safety Act. Is this your way of trying to sneak in the back door to be covered under those two acts?

Mr. Fisher: Perhaps I--

Mr. Laughren: I am only kidding.

Mr. Fisher: Perhaps you could read that into it. I do not know.

Mr. Laughren: On a more serious note, I did not leave the farm until I was 18; so I know a little about farming. I saw a

couple of very serious accidents on the farm when I was a kid that scared the wits out of me for the rest of my life on farming.

Mr. Fisher: We have all seen them.

Mr. Laughren: I am sure. I read an article in the paper--I cannot remember which one--not too long ago about the number of children killed on farms. It was scary.

Mr. Fisher: Absolutely.

Mr. Laughren: I am not going to sit here and pretend I know what the answer is, but I am sure the farmers are worried about it and searching for answers.

You mentioned doubling the amount of money that goes from the Workers' Compensation Board to the Farm Safety Association. Would the farmers be prepared to pay a higher assessment to do that, or do you feel you would be getting your fair share out of your assessment if that amount were doubled?

Mr. Fisher: What we are basically saying is that if there were going to be more money spent for health and safety education in the province, the farmers would like to have control over the portion that is raised from their assessments for their programs rather than channel them through the WCB and those other groups who would be--I am not arguing whether they should be or not--using some of those funds.

Mr. Laughren: Mr. Sweeney touched on this too. Something is not working; it is too high.

Mr. Fisher: We are well aware of that problem. You only have to go to one of our county meetings to see people with their hands off or the widows. The concern is there, and they are working towards it. It is a big job.

Mr. Gillies: I would like to make a brief comment at this point. There seems to be an underlying worry in your brief that the increased activity of the board in the area of safety could adversely affect the agricultural community. I want you to know that we at the ministry take the agricultural industry extremely seriously.

It would defy my imagination that the safety advisory council would in any way divert funding or attention away from the agricultural industry towards other sectors of the economy, especially, as my colleagues have pointed out, in view of the very high accident rate and the work that obviously has to be done in the agricultural industry in this area.

As much as I can, because the board is reasonably autonomous in its activities, I want to assure you that we take this extremely seriously. Through Mr. Cain's offices, I will be commending your brief and Hansard from today's hearings to the attention of the advisory council. But I do not think you have to worry about the role of the Farm Safety Association being diminished or minimized in any way.



Mr. Laughren: Are there any rules on children on machinery? Are there any laws?

Mr. Fisher: We have a no-rider policy, but there is no law. That is why we have this committee working. Which act do you set it up under--that is our problem--to cover not only the 25,000 farms where there are employees but also the rest of the 80,000 farms, on some of which there are the most problems?

Mr. Laughren: Was it mostly on machinery that these children got killed or injured?

Mr. Fisher: A lot of them were on machinery or related things. But there are so many hazards on the farm that you cannot specify one particular item.

Mr. Laughren: This may be waving a red flag at the farm organizations, but is it not coming to the point where you are going to have to deal with the question of whether children--I know; I drove a baler when I was about 10 years old--

Mr. Havrot: No, you were on a manure spreader.

Mr. Laughren: Yes. I was spreading the Tory platform.

Mr. Fisher: I know this might be offensive, but we wonder whether the family farm and that kind of an operation is a correct way to go or whether there are other alternatives. It is not an easy decision. If you think you have a tough decision now, you try to decide that one. That is a tough decision. Is there a place for the family farm? Should there be a place for the family farm? If it is a family farm, who does belong in it but the family?

It is a way of life and I hate to see it destroyed. On the other hand, I would just mention your particular point. I do not have the facts and figures in front of me, but it is my understanding that the \$4.8 million or whatever it is the Ministry of Labour gets now from the Workers' Compensation Board under the Occupational Health and Safety Act comes out of overall revenue. I presume the rest of the funding that is set up under the provision of Bill 101 would come out of general revenue.

Mr. Gillies: Board revenues.

Mr. Fisher: General board revenue. We are suggesting that perhaps rather than coming out of board revenue, whatever arrangement is made, agriculture should be allowed to use its own funds through the agricultural community. That is what we are really suggesting. In that way, if there are more funds designated, the agricultural community will be able to expand. If there is not, at least we will be able to have what we have now.

Mr. Gillies: In terms of the method of delivering funding, I cannot give any assurance to you now, but I feel reasonably assured in telling you that if extra money became available in this whole area, safety programs and so on, I am sure the agricultural industry and the Farm Safety Association will get their fair share. The need is there, and we at the ministry are very aware of the excellent work that the FSA is doing.



The only assurance I want to leave with you is that I cannot imagine there would be any move to minimize or diminish the work of your organization.

Mr. Fisher: We have had some concerns in our dealing with the restructuring of the Workers' Compensation Board and trying to get some of those ideas across. That is partly why we are here today. We have had concerns with getting those ideas across.

Mr. Gillies: I will certainly pass that along.

Mr. Sweeney: I just have one comment, Mr. Chairman. It may not be in the best interest of any single segment within this operation, including the agricultural community, to get itself isolated from the general terms of workers' compensation or from any other program.

In other words, as I understand your request that the extra money generated by the members of your community be directed only to your safety activities, that could very well generate the same kind of request from all the other groups. Manufacturers would say, "Our money would only be used for us." Construction people would say, "Our money would only be used for us."

Given the present situation, where in fact the agricultural community does have a fairly high number of accidents, if you start breaking a general insurance scheme into little segments like that--

Mr. Fisher: I was not talking about the insurance scheme. I was just talking about the educational services.

Mr. Sweeney: Okay, but the safety part of it is part of the total operation. You cannot divorce them. At least we would not want to divorce them. We do not want the safety part of workers' compensation divorced from the compensation part of workers' compensation.

There is a real danger of various segments within that isolating themselves and getting divorced from the general concept of an insurance scheme. From time to time, if you had a particularly bad year from an experience point of view, your rates could go sky high if they depended on your own experience. Just a word of caution there: There are advantages and disadvantages to being part of a broader base.

12:20 p.m.

Mr. Fisher: We were not asking to be separated from the base; we were just talking about the education. We are concerned too about the educational dollars being separated. We mentioned in the brief that we did not particularly like to see the funding going to labour unions, not because we are talking specifically about labour unions or anything else but because the funding should be going towards both groups together. We do not want our farm community separated in that manner either.

Mrs. Ward: Perhaps I could re-emphasize Mr. Fisher's earlier comment about the education and how it was a long process, starting in the elementary sector.

The gentleman commented that he was amazed at the number of children who were involved in accidents and fatalities. If you only knew how much of an impact it makes on a parent when your seven-year-old comes home and says: "Mummy, you are not supposed to do that. That is not safe." They learned that at school. You stop, you go back and you do whatever you knew you were supposed to do. It plays a great role and I cannot begin to emphasize it enough.

Mr. Sweeney: That is like the teacher telling the kids to brush their teeth.

Mr. Lane: I do not know whether I really have a question after listening to Mr. Watson and Mr. Sweeney--they have pretty well taken care of the things I was concerned about--but I have a comment or two.

Having spent a good many years of my life on a farm, although not having been active for the last 20 years, I can recall some of the things I allowed myself to do. I think perhaps the farmer himself is his worst enemy. I can recall hiring a nonfarm worker and saying, "Do not do this and do not do that under any circumstances," knowing damned well that I was going to do it myself the next time in the way I was telling him not to do it. I would try to get away with it because I was used to it and it was not likely anything was going to happen.

That is the way with children raised on a farm. They tend to see it done so often that they can probably do it safely. If you look at the statistics, I think you are going to find a lot of the statistics are young cousins from the city visiting the farm during the summer holidays or a nonfarm worker employed on a farm and not understanding much about the machinery.

I do not know how safety associations are going to help the tough old farmer who is prepared to do it the dangerous way anyway. I was one of those guys. I can remember doing custom threshing for my neighbours--stoop threshing we called it in those days. Of course, every time it got dry everybody wanted to thresh, so you were sort of at odds with your neighbour because you went to some other neighbour's place first. I have done repairs to a threshing machine when it was running full blast because it was going to save time. It was damned dangerous. I did not get killed, but somebody else with less experience could have been killed.

I think the farmer himself sets a bad example in many cases. It is as the lady said. When the young lad comes home from school and says, "You should not do it that way," perhaps you stop and think for a moment that you should not do it that way, but I did do it that way for many seasons and I think I was a bad example.

I think it is a "Do as I say and not as I do" type of thing because if somebody watches a lot of old farmers today, he will see they are getting away with it. They are never going to get

hurt themselves, but it could very well be serious because bad examples are being set by the owner.

Mr. Gillies: Perhaps I can make an observation. I have worked in some factories, and the point that Mr. Lane is making is also true in a lot of industrial sectors. The old hand who has been there a while knows a quicker way to do it, but he will tell the younger employees, "Do not do it that way."

Mr. Lupusella: I do not understand why the Tories and the Liberals think they are the spokespersons of the farming community. I am a bona fide self-employed farmer growing vegetables in my backyard, unable to convince the government to exempt me from paying property taxes. I hope that some day I will be able to.

I have the same concerns, that we are unable--I am including myself now--to convince the board to have some sort of input in the policy decision-making process of the board on behalf of the farmers. I think the reason we are unable to have such input is as a result of the bad apples which we are sending to the desk of the chairman of the board on a daily basis. That may be why we do not have any input whatsoever. That was just an editorial comment.

First, I would like to convey my appreciation for the content of your submission and I have a few questions which I am sure you will be able to answer.

You will recall the Ontario Federation of Agriculture refused to be part of the occupational health and safety bureau. I was part of the committee and, if I am not mistaken, their position then was to be not covered by the occupational health and safety bureau which at that time was before a committee that I was part of.

Did you change that position? Do you still keep the position that you do not want to have any coverage whatsoever? What is your position in relation to the principle of a task force which is under way with the Minister of Labour (Mr. Ramsay) to study this situation with the possibility that maybe some day the farmers will be covered by the Occupational Health and Safety Act currently existing in the province? Are you going to change your position or will it be the same, not to be covered?

Mr. Fisher: Perhaps if I could straighten the record, we were not opposed to agriculture coming under the act. We were opposed to agriculture coming under the act all at one time. We wanted the act to address the major concerns in agriculture first, and it would be very difficult for agriculture.

There have been several approaches, an ongoing approach to try to resolve this problem, having good reference to other jurisdictions and the problems they have had in trying to cover agriculture. That is why the farming community is supportive of this task force that is now being formed and why we hope we can come up with some kind of method to create a better, safer and healthier working atmosphere in the farming community.



That is really what we are trying to do. We are opposed to the fact that if agriculture had to understand and comply with the whole bill at one time, it would be a very difficult situation. The exemption in the act allows for agriculture to come in by section and by regulation, and so on, on a step-by-step basis.

We are very anxious to try to assist in any way to help that task force come up with a solution.

Mr. Lupusella: I am sorry if I misread your position.

Mr. Fisher: Originally we were opposed only to the holus-bolus thing and we wanted to try to come under in a way that would really be a benefit to the agricultural work force.

Mr. Lupusella: The reason I misread your position is that I did not sit for the full hearings of the committee that was studying the contents of the bill then, but I am sure I now know where you stand. Do you think the time has come for the farmers to be covered by the Occupational Health and Safety Act, or do you still need some time until you are going to have full coverage?

If you get full coverage under the Occupational Health and Safety Act, what is your position in relation to your specific request which is part of the content of your submission today?

Mr. Fisher: I am not sure how to answer the first part of your question. We have a task force and I cannot suggest--

Mr. Lupusella: Is it your own task force or the Ministry of Labour task force?

Mr. Fisher: It is a joint task force with the Ministry of Labour and the Ministry of Agriculture and Food. Both of them are sponsoring the task force and I can not anticipate how they will resolve those issues. I hope they can come to some resolution.

12:30 p.m.

Mr. Lupusella: You understand the other half of my question?

Mr. Fisher: I understand. The other half of your question is the fact that if they can come to some resolution and agriculture does come under the act, I assume at that time we will be under the same kind of jurisdiction as the rest of the safety associations or the rest of the people. Then parts of this will no longer be applicable.

Mr. Lupusella: That is why I raised the question.

Mr. Fisher: I agree with Mr. Sweeney's point that the less agriculture can be separated down the road in years to come the better it will be, but at the moment it does not seem to make sense. That is all.

Mr. Lupusella: Will you be satisfied with the service the farming community will be receiving if it has full coverage



under the Occupational Health and Safety Act that already exists in the province, or is there an extra need for the farming community that must be considered to take into consideration its concern, in case it gets full coverage under the Occupational Health and Safety Act?

Mr. Fisher: Again, I think you are trying to get me to answer what the task force is working on. I hope the task force can resolve those issues. I think it is very capable, but I find it hard to anticipate what its resolution will be and how it will come up with that.

Mr. Lupusella: To take into consideration your immediate concern, will you be satisfied if there is a representative of the farming community sitting on the new corporate board, just to answer your immediate concern until the task force comes up with the final decision on whether farmers must be covered by the Occupational Health and Safety Act?

Mr. Fisher: Did you say a member of the corporate board?

Mr. Lupusella: Yes. Then you would have a lot of input.

Mr. Fisher: I had not thought of that. I do not know exactly how to answer that question. I do not think agriculture is interested in trying to run the WCB.

Mr. Lupusella: I am concerned. I want you to sit on the corporate board.

Interjections.

Mr. Lupusella: Do not think the Tories and Liberals are extremely concerned about your problem. Only the New Democratic Party is concerned.

Can you think about that?

Mr. Fisher: I will leave that decision to you people. I presume that would be one of the possible resolutions that could be made.

Mr. Gillies: Would you be satisfied if that farmer appointee was Mr. Lupusella?

Mr. Fisher: I would like to know whether he grows carrots or grapes.

Mr. Lupusella: I will send you some of my tomatoes. I actually got the seeds from the farming community.

Mr. Villeneuve: Mr. Chairman, time is going on very quickly. I firmly believe in what Brenda was saying a while ago here about education as opposed to legislation. That is the only way to go. I was on the ground floor of the Farm Safety Association. I did not realize it was as long ago as 1959, Andy. I must have been a junior farmer back then.

Interjection.

Mr. Villeneuve: Yes, right. Certainly that is the only way to go. How can you legislate a three-year-old out of the barnyard or farmyard where equipment is moving? You cannot. It is education, and that is the way I see it.

(Inaudible) and the Farm Machinery Advisory Board were getting something prepared regarding farm safety. Has that come to fruition?

Mrs. Long: I do not know.

Mr. Villeneuve: Before being in politics, I was on the Farm Machinery Advisory Board, and it was working on something last year that would have involved about eight or 10 different--

Interjection.

Mr. Villeneuve: Is it happening? That is right. You were there, sure.

Mr. Chairman: Excuse me. You will have to come up to the microphone so we can have you recorded in Hansard.

Mr. Weatherall: That program is now being turned over by Dr. Collin to the Minister of Education (Miss Stephenson). They are trying to get that safety program taught in all schools, in all colleges. The last report I had was there was a lot of interest in Kemptville and all the colleges and so on.

Mrs. Long: Mr. Chairman, I just wanted to add that in addition to the educational programs in the elementary schools, the Farm Safety Association consultants also teach credit courses in the agricultural colleges. Presumably those are the beginning farmers and, hopefully, we have them educated in safety when they go out and start their careers.

Mr. Villeneuve: I firmly agree with that. It is the way to go. Heaven forbid if we have to start legislating. We will have a major problem if we have to start legislating on the farm. With all due respect to the parliamentary assistant, any time the Ministry of Labour is mentioned on the farm, the guy takes a fit.

Mr. Watson: You just keep making your combines in Brantford.

Mr. Gillies: I would just to say to my colleague, I have been parliamentary assistant for a year now and if you think they just take a fit on the farm, you are crazy.

Mr. Sweeney: On that uplifting note...

Mr. Chairman: I would like to thank the delegation for appearing before us. Your input is certainly going to be helpful to us in our deliberations. Thank you so much, and all the delegation who appeared with you. It was very enlightening.

The committee recessed at 12:37 p.m.

ERRATA

<u>No.</u>	<u>Page</u>	<u>Line</u>	<u>Should read:</u>
R-35	19	14	<u>Mr. Gillies</u> : On the other hand, how much would the board
R-35	19	18	<u>Mr. Gillies</u> : It would be a heck of a lot, so it works both
R-35	19	23	<u>Mr. Gillies</u> : I agree with you that there is a problem there.

CA 24N  
XC 13  
- 878

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, JULY 25, 1984

Afternoon sitting





## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Haggerty, R. (Erie L) for Mr. Riddell

Also taking part:

Gillies, P. A. Parliamentary Assistant to the Minister of  
Labour (Brantford PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Witnesses:

From the United Steelworkers of America, Workers' Compensation  
Committee:

Abernot, D., Member

Guillet, S., Member; Occupational Health and Safety Co-Ordinator,  
District 6

Heard, L., Member; Occupational Health and Safety Representative,  
National Office of Canada

Hickey, J., Member

Martin, J., Member

Mellor, D., Member

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, July 25, 1984

The committee resumed at 2:09 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: Gentlemen, welcome to our committee. We have just one delegation for sure, the delegation that is appearing before us, the United Steelworkers of America. There is a second possible delegation, a Mr. Tony Little, and we will not know about him until a little later on this afternoon.

The other thing we want to discuss before departure today is a matter that we discussed this morning. Mr. Cain has some clarification and some submissions for us to look at in answer to questions we had received earlier in these hearings.

I guess we will govern ourselves to have completed our hearing with you people at 4 o'clock. If the other delegation shows up, we might cut 15 minutes off that. It is going to take us a while to deal with our Workers' Compensation Board matter.

Having said those few words, welcome. We will let you introduce yourselves and away we go.

UNITED STEELWORKERS OF AMERICA

Mr. Heard: Mr. Chairman, my name is Lorne Heard. I am in the national office of the United Steelworkers of America, working for Gérard Docquier, who is the national director. On his behalf and on behalf of the director of District 6, I want to thank this committee for giving us the opportunity to appear this afternoon to give our thoughts and feelings on Bill 101.

In doing that, we will be going through the document we have left with you. That is the brief we have prepared. A number on our committee will be taking part in the reading of the document. Following that, we will be pleased to answer any questions that may come out of it.

At this point perhaps I can introduce the committee. On my far left is Dennis Abernot, who is from Local 2251 in Sault Ste. Marie. Next on my immediate left is Jim Hickey from Local 6500.

To my immediate right is Simon Guillet, who is the co-ordinator for District 6, working under Dave Patterson, the director. Next is John Martin from Local 1005 in Hamilton. On my far right is Dave Mellor from Elliot Lake. He is from Local 5762. That constitutes our committee.

I bring apologies from two members of the committee. Unfortunately, they were not able to be here. Gordon Prest and one of the members from the Elliot Lake area were unable to be here. We make those apologies for those two members of the committee.

We have divided the report up. If it is permissible, we would like to follow that routine and each one will take a section of the report. On that basis, I ask Mr. Guillet to open with our brief.

Mr. Guillet: Mr. Chairman, the United Steelworkers of America appreciate the opportunity to present comments and recommendations to the standing committee on resources development on the matter of Bill 101, the amendments to the Workers' Compensation Act.

This brief is presented on behalf of the United Steelworkers of America, District 6, Ontario, and the national office by the USWA workers' compensation committee consisting of Lorne Heard, occupational health and safety representative, national office of Canada; myself as co-ordinator of occupational health and safety, District 6; and members Dennis Abernot, Jim Hickey, Ted McConnell, John Martin, Dave Mellor and Gordon Prest.

While our brief deals primarily with the amendments with which we disagree in whole or in part, we do, however, recognize the positive steps taken in Bill 101 to reduce or correct some of the inequities in the Workers' Compensation Act.

We applaud certain amendments, such as the deletion from the old act of the right of employers to compel medical examinations of an injured worker by a board doctor, sections 21 and 22, and the new right to benefit entitlement by a surviving spouse despite remarriage or a common law relationship and despite the surviving spouses's personal moral code, section 50.

We also concur with the intent of the amendments dealing with a panel of medical practitioners to assist the appeals tribunal, the industrial disease standard panel, the expansion of the worker-adviser role, the improvements to medical records access and the inclusion of domestics under the act. We will refer in some detail to these items further in our brief.

We are also pleased that the actual wage loss scheme recommended by Professor Weiler has not been implemented. This scheme, which might have denied permanent pensions to thousands upon thousands of permanently disabled workers, would have been a gross travesty of justice and fair play.

Mr. Jim Hickey will continue.

Mr. Hickey: Mr. Chairman, the history and purpose of workers' compensation: In presenting our views, it is useful to review briefly the history and purpose of workers' compensation. The Workers' Compensation Act is based fundamentally on a no-fault system of compensation to workers injured in an industry, or workers contracting an industrial disease in an industry covered by the act.

The employers and industries covered by the act are not liable for claims by their employees who may in the course of employment be injured or suffer an industrial disease.

This double-edged principle of workers' compensation was first officially recognized in Germany in 1884 under Bismarck, although a similar practice had long been recognized in many parts of the world. The principle of state-controlled compensation in return for the absence of employee lawsuits against employers spread slowly across Europe and finally, much later, was adopted in North America.

The common denominator in all systems in every country that adopted the workers' compensation philosophy was that the principle of fault be eliminated. In fact, when this idea was first introduced, it was felt that, if the principle of fault were not inherent, the whole industrial structure would collapse.

Sceptics of the workers' compensation principle, especially in industry, were finally convinced when faced with the following logic based on a no-fault principle: the compilation of central, accurate statistics would be possible; financial loss to workers should be made a charge upon the industry and be figured as one of the costs of production; an end to the financial drain upon workers and the community, which rightfully belonged to industry; an end to the considerable legal expenses on the part of employers defending accident suits launched by injured employees and an end to the large, costly court verdicts being assessed against individual employers; the workers' compensation principle would practically eliminate the antagonism between the employee and the employer brought about by accident litigation.

However, there is one little aside I would like to make, and that is that there still remains a problem and a financial drain upon workers in that delayed decisions create a problem. While no money is coming in and while the worker is waiting for a decision from the board, he must maintain his mortgage payments or pay accumulated interest on the unpaid mortgage.

A factor that comes to my mind is one instance in which a chap had to wait from June 1982 to September 1983 for a decision. In that time he had his obligations to meet with no funds coming in. He finally wound up receiving approximately \$19,000 in moneys due from the board, but he was without the interest that ought to have accrued in that period of time. This is a factor. The financial drain on workers still remains an issue and a problem in that respect.

Mr. Guillet will carry on from here.

Mr. Guillet: The principle of no fault: The adoption of such a reasonable principle of social justice was inevitable although painfully slow. The act finally became law in Ontario in 1915, although industry had been dealing with the problem on an ad hoc litigation basis for over a century.

Since the no-fault principle is so important to the entire system of compensation, and since one of the early foundation



stones of the system was the elimination of antagonism between employers and employees, we ask ourselves the following question: If the act is a workers' act established under the aforementioned principles, why do employers require employer advisers and why are employers allowed to present evidence and examine witnesses at appeal hearings?

If it is true that the act is a workers' act, that there is a principle of no fault, that antagonism between the parties must be reduced or eliminated, then we believe the use of employer advisers will lead to a more adversarial relationship. Appeal hearings will deteriorate into adversarial, courtroom-type proceedings. In our opinion this would be completely contrary to the principles of the Workers' Compensation Act as enunciated by Sir William Meredith in his final report to the Ontario Legislature in 1914.

Further, Bill 101 suffers from several very obvious omissions:

No provision for indexing permanent disability benefits;

No provision for increases in the cost of living to existing claims;

No revision to section 54 to guarantee access to nonmedical rehabilitation;

No provision to enable future revisions of benefit rates other than by the current annual legislative amendments;

No provision to ensure that an injured worker may return to his, or her old job when ready to return to work;

No provision to enable an injured worker's family doctor to participate in the medical aspects of a claim or an appeal;

2:20 p.m.

No provisions that delineate the parameters of responsibility of the new appeals tribunal. Rather, the tribunal is free to "determine its own practices and procedures."

We believe these very important issues must be addressed positively if any revision to the Workers' Compensation Act is to be termed progressive and fair to all concerned.

In presenting our brief for your consideration, we also urge you to regard some very important statistics with which all of us are, unfortunately, familiar. In 1983 there were 344,758 industrial accidents in Ontario reported to the board, and 219 workers lost their lives because of industrial accidents or disease. In the first five months of this year, industrial accident claims have increased by 16 per cent. It is completely unacceptable that so many workers are injured, maimed or killed in the pursuit of earning their daily bread.

Industry must be made safer. More corporate resources must

be expended on the reduction and elimination of industrial accidents and diseases. While this is being accomplished, the Workers' Compensation Act must be made totally fair, completely undiscriminatory and permit workers who suffer industrial injury or disease to be compensated and not punished.

We thank you once more, Mr. Chairman and members of the committee, for the opportunity to address you on these crucial issues. Our comments and recommendations will be on the amendments or sections which we feel require further consideration by this committee. We will follow the same sequence in which Bill 101 is laid out. I would ask Mr. Lorne Heard to continue.

Mr. Heard: Compensation, subsections 3(1) through 3(7), pages 5 and 6 of the bill: The employer to be required to pay the worker's full wages and benefits from the day of the injury. Our concern is that all benefits be covered and paid by the employer for the total time of the worker's disability.

We recommend that all benefits including, but not limited to, Ontario health insurance plan premiums, extended health, unemployment insurance commission premiums, Canada pension plan premiums, pension credits and others normally covered, be continued and paid by the employer for the period of disability.

Civil liability, section 5, page 6: Extending exemption from civil liability to executive officers of employers. The United Steelworkers of America is in total opposition to extending to executive officers of employers exemption from an action under civil liability. We feel this would only broaden the base for executive officers to hide under when they fail to properly exercise their responsibility and where negligence is obvious.

We recommend that exemption from civil liability not be extended.

Compensation of survivors, sections 9 through 36, pages 7 to 10: A dual award program for survivors setting out a lump sum payment for noneconomic loss and a continuing payment based on deceased preinjury net average wage.

We have for some time pressed for improvement in survivors' benefits. The benefits set out in the bill are a dual award system which consist of a lump sum and ongoing periodic payments. The lump sum is variable by age, the centre point being age 40 years. This then reflects the assumption that the younger spouse likely will have more difficulty in financial obligations such as insurance, mortgage, eye care, dental care, etc., and would have a greater need for immediate income support while he or she puts his or her life back in order, perhaps by taking vocational retraining to try to re-enter the work force.

On the other hand, the assumption in the case of the older surviving spouses seems to be that they will have fewer immediate financial needs--therefore, small lump sums--but a greater need for long-term income support. As a result, they again use 40 years as the centre point. Older spouses get a greater percentage while

younger spouses receive a lesser percentage of net average earnings in pension benefits.

These sorts of assumptions are out of place in the act. Survivors' benefits are to compensate for survivorship; i.e., the death of a spouse, and not to engage in socioeconomic theorizing about the circumstances of the dead worker's surviving dependants. Many such people will not fit the imagined circumstances. Moreover, benefit levels that discriminate according to age are unjust and we cannot support them.

There are many departures from the usual rule. A sole spouse gets a pension of more than 40 per cent of the net average earnings. A spouse with one dependent child gets 90 per cent. But the one dependent child, who accounts for the difference of 50 percentage points, gets 30 per cent in the situation where there is no spouse. Two such kids get a total of 40 per cent. Why these different percentage sums?

I will give you a few examples, Mr. Chairman. In the current system, effective July 1, 1984, as per Bill 99: Under situation A, surviving spouses, aged 25, 40 and 55, no children, lump sum \$1,500 and pension \$593 per month, for a total of \$7,116 per year, with burial expenses up to \$1,500; under situation B, surviving spouses, aged 25, 40 and 55, two dependent children, lump sum \$1,500 and pension \$593 per month, plus \$165 a month per child to the age of 16, with burial expenses up to \$1,500, for a total of \$923 a month or \$11,076 a year.

We have tried to extend into Bill 101 the same sequence of events. I will not take the time of the commission to read those examples through, but I would ask you to look at them at a later time because they give you situations that could exist under Bill 101. Our recommendation is that the survivor benefits be used to compensate for the survivorship and that all discriminatory measures be removed from this section.

Deduction for Canada pension plan, section 9 of the bill, subsection 36(13) of the act, page 10: "Calculation of average earnings of deceased worker to be reduced by amount of earnings under CPP survivor benefits."

The integration of CPP survivor benefits with WCB benefits payable to survivors is wrong, not only morally but possibly legally as well. The CPP is a contributory plan. Eligibility to benefit is earned by paying contributions. The proposed integration simply subsidizes the legitimate cost of the employer doing business. The employers do not pay benefits; they are applying deferred wages to these costs.

This may be contrary to what some people would have the general public believe. The hard truth is that workers pay for all their benefits by way of deferred wages. We recommend that there be no integration of CPP with WCB survivor benefits.

Disability compensation, section 11 of the bill, section 39 and subsection 40(1) of the act, page 10: "Full compensation benefits to be based upon 90 per cent of pre-accident net average earnings."



There are a number of perceived problems with this change. There are so many unanswered questions, it is difficult to deal with this section. We would like to pose but two or three of the problems. 1. What average earnings are being referred to? Average of total time or average of time worked? 2. What is net to be? Net at tax or net after all employee deductions? 3. If the net is to be taken on the amount after government tax, it should be set out clearly in the bill. We recommend that all disabled workers receive full lost wages and benefits for all periods of disability.

Temporary partial disability, section 11 of the bill, clauses 40(2)(a) and (b)(i) and (ii), pages 10 and 11: "Temporary partial disability to be 90 per cent of the difference of pre- and post-injury or equivalent to temporary total disability unless the worker fails to co-operate or is not available for rehabilitation or for suitable work."

We reiterate our previous comment on section 11 of the bill, section 39 and subsection 40(1) of the act, and recommend that workers on temporary partial disability receive a makeup of full lost wages and benefits and that the above restrictions apply only if a worker rejects available work that he is able to perform.

Integration of CPP in temporary partial disability, section 11 of the bill, subsection 40(3) of the act, page 11: We have stated before that we are opposed to any integration of WCB with CPP. The worker is fully entitled to CPP and this should not be used to subsidize the employer's cost of doing business. We recommend that the CPP not be integrated with any compensation benefits payable.

2:30 p.m.

Earnings ceilings, section 41, page 11: "Earnings ceiling increased to \$31,500." We strongly disagree with the ceiling on earnings for purposes of compensation calculations. Earnings ceilings discriminate against the bonus worker such as the miner and other high-wage earners by penalizing them financially if they are injured. Therefore, the only workers who would truly receive 90 per cent of their net earnings are those earning up to \$31,500 per year.

It is questionable that the worker would receive 90 per cent even if he or she was under the proposed ceiling. It is unclear if "net" covers deferred wages covered by collective agreements as benefits, insurance and welfare programs which form part of the overall remuneration.

We recommend that there be no ceiling on the maximum amount of average earnings and that the injured worker receive complete income replacement.

Minimum compensation, section 42, pages 11 and 12: "The minimum amount payable for temporary total disability is \$10,500 a year where the worker's net average earnings exceed \$10,500 a year and the actual net average earnings where net average earnings are less than \$10,500. Temporary partial disability will be paid as a percentage of these figures (draft subsections 42(1) and (2), page



11). The minimum amount payable for permanent total disability will be \$10,500 a year. For permanent partial disability the minimum is to be the appropriate percentage of this figure (draft subsection 42(3), page 12)."

When looking at minimum compensation, one must be fully aware of what the bare needs are for workers. Statistics Canada's figure on low-income cutoff as of December 1983 for a couple was set at \$12,440, but the minimum workers' compensation in Ontario in 1984 is set at \$10,500, or \$1,940 below the poverty line. The National Council on Welfare figure for March 1984 for a couple is \$13,063, or \$2,563 higher than the board minimum proposed.

We recommend that the minimum compensation be set at a reasonable amount above the poverty line to allow injured workers and their families to live in reasonable comfort and security.

Average earnings, section 43, pages 12 and 13: "In determining the average earnings of a worker, the board will calculate the daily, yearly or such lesser period immediately preceding the accident."

The net average earnings are less income tax, CPP premiums and UIC premiums payable, but it is not clear in the bill as to how this is to be done. We ask that this area be set out very clearly and that a complete understanding of the procedure be tabled. At that point labour would like to have the opportunity to make comments on that procedure.

We repeat our earlier recommendation that injured workers receive complete income replacement, including all benefits.

Net average earnings, subsection 44(1), pages 13 and 14: "Net average earnings to be determined by deducting proportionate amounts of income tax, CPP and UIC premiums, to be established in a table by the board."

While we repeat our position that the injured worker should receive full income replacement, we are addressing all relevant sections dealing with compensation and earnings. Should our reasonable position on the full income replacement not be accepted, we alternatively submit the following comments.

We feel the board has no need for this schedule. The company has the information available, as it would on employees' earnings under the old act. This would amount to a duplication of information.

We point out that using the tax base income can penalize the worker. There are obvious problems. Some workers list themselves as single with their employers so that they will overpay their tax deductions through the year and generate savings in the form of annual rebate. Others who have worked part-time at more than one job intermittently throughout the year or only a partial year may well be eligible for a rebate at the end of the year. What is such a person's probable tax payable? This must be a provision for an adjustment at the end of the year.

We recommend that the injured worker receive complete income replacement, including benefits.

Earnings capacity, subsections 45(7), (8) and (9) of the act, as amended in section 11 of the bill, on page 15:

"Where there is impairment of the earnings capacity for an older worker that is greater than is usual for the injury sustained, and where the worker cannot return to work and is unable to benefit in a vocational rehabilitation program of re-employment from nonmedical rehabilitation, the board may pay a supplement to the permanent partial disability award up to the value of old age security benefits until actual eligibility for OAS begins or the worker finds employment. The total of the basic award plus this supplement cannot exceed 90 per cent of net average earnings. The board shall have regard to the effects of inflation on the pre-accident earnings. Earnings will be adjusted for inflation in calculating the supplement, and the board shall have regard to any payments the worker receives under the Canada pension plan. Such CPP benefits are not a barrier to receiving this supplement or temporary total award."

Current policy treats CPP benefits as a bar to receiving a pension supplement. In a sense, Bill 101 is a clear step forward. The escalation of pre-injury earnings to inflation is a positive step, as is the fact that the subsection speaks only of the older worker without limiting the definition to a specific age range. However, the proposal to offset the supplement award against CPP disability benefits is very regressive. This type of legislation puts the worker in a position of subsidizing the employer's cost of doing business.

We recommend that compensation benefits should not be integrated with CPP or any other plan and that injured workers should receive complete income replacement, including all benefits.

Board of directors, subsections 56(1) and (2) of the act, as amended in section 15 of the bill, on page 17: "The board of directors will consist of a full-time chairman, a full-time chairman of administration and five to nine other part-time members, representatives of employers, workers, professional persons and the public. The chairman of the appeals tribunal is an ex officio member but does not vote on any matter."

The question of the method of selection of worker representation to the board of directors as well as the appeals tribunal and the industrial disease standards panel is a crucial one. There must be a formal procedure for nominations through the Ontario Federation of Labour. The same applies to the draft section 86h on page 24, whereby the cabinet may request and consider the views of representatives of employers, workers and physicians before naming a consulting panel of independent practitioners. Clearly, if the phenomenon of "board doctors" is to be avoided, clear emphasis must be placed on the independence of such nominees.

We recommend that the worker representatives to the board of directors be nominated by the Ontario Federation of Labour and appointed by the Lieutenant Governor in Council.

I will now turn it over to Dennis Abernot.

Mr. Abernot: Access to records, subsections 77(1), (2), (3), (4), (5) and (6) of the act, as amended in section 28 of the bill, on pages 20 through 21:

"Where there is an issue in dispute, upon request the board will give a worker, his surviving dependants or his representative full access to and copies of all files and records. Where there is information, medical or other, that the board feels would be harmful to the worker, it will release such medical information to the treating physician instead of the worker or his representative and will advise them that it has done so.

"Where there is an issue in dispute, the board will grant to the employer access to copies of such material it considers relevant, and the board will give like access and copies to the employee if so authorized by the employer.

"Where the employer is given such access to and copies of records, the worker or his representative shall be informed of the access and copies given.

"Before granting an employer access to medical records, the board will inform the worker or claimant of the records it considers relevant and permit written objections within a period specified in the notice before granting access to the employer. After considering the objections, the board may either grant or deny access with or without conditions.

"A decision made under this provision can be appealed within 14 days, and no access will be given to the records until the end of the 14-day period or until the appeals tribunal gives its decision, whichever is later."

2:40 p.m.

It should be noted that the appeals tribunal sets its own rules and procedure (draft section 86k, page 26). Accordingly, it is not clear what the appeal to the tribunal would involve, whether there would be a full hearing or an internal review solely, etc.

The information on a worker's file is confidential information between the board and the worker. That information should be no different from the information on file with his family doctor. Worker's medical information should not be released by the board without the worker's consent under any circumstances.

This amendment opens a new avenue for confrontation and should provide the appeals section with a great deal of work. The amendments again do not reflect the fact that the act is a workers' act to compensate for injury, and not an employers' act.

We recommend that no information on a worker's medical condition be released to anyone without the worker's consent.

Appeals tribunal, section 32 of the bill, section 86a of the act, on page 21: "There is to be a new tribunal to be known as the Workers' Compensation Appeals Tribunal."



We are in full agreement with a tripartite appeals tribunal. We recommend that there must still be a provision whereby a worker has the right to take his case to the provincial Ombudsman as a last resort.

Composition of appeals tribunal, section 30 of the bill, section 86b of the act, on page 22: "There shall be appointed a chairman of the appeals tribunal, one or more vice-chairmen of the appeals tribunal and as many members of the appeals tribunal, equal in number, representative of employers and workers, respectively, as is considered appropriate."

As with the previous section, we support this concept and we will co-operate in its function. However, there should be input from organized labour on the appointments of the labour representatives to this tribunal.

We recommend that one vice-chairman be nominated by labour and that all requests for the filling of these positions be done through the Ontario Federation of Labour.

I will ask Dave Mellor to continue.

Mr. Mellor: Panel of medical practitioners, section 32 of the bill, section 86h of the act, on page 24: "Use of medical panel to assist the appeals tribunal regarding medical issues in dispute."

As we pointed out on section 15 of the bill, section 56 of the act, dealing with the board of directors, it is crucial that this panel not only be independent but also must appear to be independent. We, however, support this concept as a definite improvement.

We recommend that members of this panel be appointed only after consultation with and approval by the Ontario Federation of Labour.

Industrial Disease Standards Panel, section 32 of the bill, section 86p of the act, on pages 27 and 28: "Establish an Industrial Disease Standards Panel to review and make recommendations regarding compensation policies and practices for occupational diseases."

We support this move and feel it is a step forward in dealing with occupational disease. It must be clear in the bill that the labour community must be part of this panel.

We recommend that members of this panel be appointed only after consultation with and approval by the Ontario Federation of Labour.

Worker adviser, section 32 of the bill, section 86q of the act, on page 29: "Expand the office of worker adviser under the Ministry of Labour."

This change is long overdue and we strongly support it, as these advisers are badly needed in outlying areas of the province.



However, if these advisers are to be independent, they must appear to be independent. We believe that having them report to the Ministry of Labour may not be in the best interests of the appearance of independence.

We recommend that worker advisers be appointed through nominations from the Ontario Federation of Labour and that they report to another ministry of the government.

Employer adviser, section 32 of the bill, section 86r of the act on, on page 29: "Establish an office of employer adviser."

We are totally opposed to the establishment of an employer adviser. We are of the opinion that this would be against the entire concept of a no-fault workers' compensation system. This proposal will only lead to an adversarial system.

If some employers expended the same efforts in correcting the unsafe conditions in their plants that they obviously expended in lobbying to obtain employer advisers, time and effort would have been better utilized.

The point must be made that this is a workers' compensation act, and not an employers'. The worker gave up fundamental rights in return for the right to be compensated for industrial injury or disease. It now appears that employers want to change these fundamental rights.

Sir William Meredith recommended, in drafting the Compensation Act in 1914, that compensation be considered a cost of doing business. The establishment of employer advisers goes completely against the grain of these fundamental principles. We recommend that employer advisers not be considered.

Domestics, section 36 of the bill, section 131 of the act, page 30: "Extend the coverage of the Workers' Compensation Act to include domestics." This change is long overdue and we support it. We point out that many of these workers will not be aware of their rights. Therefore, the change must be communicated to them. We recommend that complete information of WCB coverage be communicated to all domestics by an intensive publicity campaign.

I will ask Jim to carry on with this report.

Mr. Hickey: Industrial diseases, subsection 34(1), page 29: "Subsection 122(9) of the act is changed to strengthen the presumption that disability is due to industrial disease."

This is a major step forward and emanates from the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, chaired by Mr. J. Stefan Dupré. It also incorporates a change which provides that a worker need not have been employed in the disability-causing industrial process immediately before disability, but only at or before the time, which follows a major recommendation of the royal commission.

We feel there are at least two major omissions regarding asbestos. First, schedule 3 must be amended to add "asbestos" in

the first column and "mesothelioma" and the words "any process involving the use of asbestos" in the second column.

Second, protection should be provided under the act to family members, as set out in the Dupré commission report. The act should be amended to entitle individuals who contract mesothelioma, and are family members of asbestos workers who were domiciled with these workers at the time such workers were occupationally exposed to asbestos, to the same compensation benefits as the act accords to employees. The board should have the statutory right to recover the cost of benefits paid to a family member of an asbestos worker from the employer of that worker.

There is one other point I would like to raise in regard to the matter of industrial diseases. In the mining industry there are a number of situations where workers who are exposed to hazardous elements become industrially disabled and are labelled with chronic emphysema, asthma, bronchitis and lung disease, to name a few. The fact is that the compensation board can only become aware of the incidents when a report is made or a claim is filed. All other such diseases that occur and leave a person disabled are not, in effect, a claim before the compensation board; so there is a factor here that industrial diseases are not, in a sense, covered by the act itself, but only when it becomes known.

Mr. Sweeney: I am sorry. Would you go back and repeat that last part? I do not understand what you are saying.

Mr. Hickey: The only time that the Workers' Compensation Board becomes aware that an industrial disease exists is at the time when a claim is filed. Otherwise, there is a great big silence. There is not even a question mark, because there has been no record made that such a claim exists or that such a person became disabled in that particular industry.

2:50 p.m.

There is something lacking in the fact that industrial workers in Ontario are not able to engage in the protection that ought to be provided to them except when a claim is lodged before the WCB. No steps have been taken to determine whether there is any relationship between the worker and the industry and the disease that he suffers until a report has been filed. There is something lacking in there.

There should be established a registration of workers who have been exposed to hazardous substances so there will be a register declared and there will be an easement to declare that man worked at that place where he was exposed to this particular substance and he suffers from this disease as a consequence.

This is the factor, so as long as there is no such registry you are dealing only with the claims that are actually initiated before the board. There are many people who might otherwise be entitled to benefit from workers' compensation who are ignored because claims are not processed. We feel this is a factor, that

there is something lacking in the setup whereby these kinds of claims ought to be considered.

For example, nobody will successfully hide a tree out on the prairie, but you can hide a tree in the bush because it will never be distinguished from the other trees that make up that bush. Until you establish this registry and make it active, you cannot really and honestly dispense justice to the people who work in Ontario and who have those kinds of exposures.

John Martin will take over from here.

Mr. Martin: Meat chart: Although not covered in Bill 101, we submit that the meat chart does not properly compensate for occupational and nonoccupational losses.

As Paul Weiler commented in his report to Minister of Labour Robert Elgie in November 1980, "We must discard the traditional notion of average justice based on some presumed relationship between the degree of physical injury and the percentage of wages lost."

We have pointed out many times in the past that a percentage pension based on the loss of a certain portion of the human body is inhumane, totally unjust and archaic. As Paul Weiler pointed out, the loss of an arm or leg for an office worker is impossible to relate to the loss of an arm or leg to a construction worker who may well, if he cannot be retrained, suffer a lifetime of punishment.

The office worker, receiving the equivalent of one and one half times his salary as a pension, and being able to continue long-term employment, would actually receive the equivalent of one and a half times more salary while continuing to perform his job. Obviously, this was an extreme example but one that is quite possible under the present system and one that is totally unjust, since it compensates some more generously than others, or possibly punishes some and rewards others.

Our position is that an injured worker should receive a lifetime clinical disability rating-related pension, fully indexed, to compensate for nonoccupational losses including pain, suffering and the loss of the amenities of life. There are many situations where permanent disability develops but not necessarily wage loss, for example hearing loss, for which this pension would compensate.

Moreover, a second lifetime pension, fully indexed, to compensate for the loss of earning capacity should be awarded to the injured worker for occupational losses.

It is extremely important that the dual aspect of compensating for nonoccupational and occupational loss be recognized and implemented.

I would turn it over to our chairman, Lorne Heard, for our conclusion.



Mr. Heard: On behalf of the United Steelworkers of America, we thank you for your attention and consideration to our comments and recommendations.

We believe our brief has offered a great deal of constructive criticism and some praise of the amendments contained in Bill 101. The local union members of our compensation committee--Dennis Abernot from Sault Ste. Marie, Jim Hickey from Sudbury, Ted McConnell and Dave Mellor from Elliot Lake, John Martin from Hamilton and Gordon Prest from Balmertown-Red Lake--all have many years of practical experience with the human side of the Workers' Compensation Act. Their knowledge and experience have been invaluable to us in preparing this brief.

We sincerely hope you will look favourably upon our recommendations to help workers in Ontario obtain one of the fairest compensation systems in the world.

On behalf of the United Steelworkers of America, we would like to thank you again for this opportunity.

I have one other brief item which is not in our brief. We support the brief submitted to this committee on July 16, 1984, by the Council for Franco-Ontarian Affairs.

Mr. Chairman: Thank you for that well put together and informative brief.

Mr. Sweeney: Could I go back for a minute, to be sure I understand the fine point of your earlier discussion with respect to industrial disease? A person who contracts a disease and reports it to the compensation board obviously has a record of that. You are saying, though, in addition to that kind of situation, there are others who contract an industrial disease, and for some reason--I am not sure I understand this--it would not be reported to the board and therefore there is no record of it. I am sorry. That is where I am missing something. Would you help me find it?

Mr. Hickey: I would have to go back a long way to highlight what I am talking about. For example, we had the well-known sintering plant exposure in the Copper Cliff smelter. As I remember, the first time we submitted a claim for a cancer victim was in 1964. The reply we got was something like this, "There is no record of lung cancer being related to or arising out of the occupation in this kind of environment." I am choosing words which may not be exactly in conformity.

Mr. Sweeney: Okay. I understand what you are saying.

Mr. Hickey: Up to that point, there was never any kind of record that a person who contracted cancer out of the Copper Cliff smelter sintering plant had any entitlement to any benefit. It was in 1970, some six or seven years later, before that first claim was allowed. In the interval, there were 39 or 40 claims filed between 1964 and 1970. They were processed and advanced on their individual merits; some were allowed, some denied, some appealed and allowed again.



Anybody who has worked in the sintering plant who has now contracted lung cancer is aware of the fact that he has an entitlement to workers' compensation. But there are many other operations where this kind of searchlight has not been focused on the problem. There are people who have been exposed for many years to a particular hazard in their working operation who contract, not necessarily lung cancer but something else, and who are unaware of the fact that they have an entitlement to workers' compensation.

As long as no claim is filed, the Workers' Compensation Board has no awareness that this problem exists and that there are workers becoming disabled through hazards of exposure to certain substances.

Mr. Sweeney: If a worker does not make a claim to the board, under the scenario you describe--I understand that--to whom would he make such a report? Who would keep such records? How would you start the ball rolling?

Mr. Hickey: That is a good question. I do not know whether I have the answer, but I will try to give you one. First, the employer becomes aware that the man becomes disabled because he does not show up at his work place; that is number one. There is the doctor who treats him; that is number two. The government that sits down here is number three.

It ought to be possible for the employer, the doctor and the government to become aware that worker John Smith has a problem. It may be related to the work environment; it may not be. But why ignore it, when it very well could be a work-linked disability?

3 p.m.

Mr. Haggerty: Did not Dr. Ham make that recommendation, that there should be a catalogue of persons who are employed in hazardous conditions, say in uranium mines or other industries that may be related to industrial disease?

Mr. Heard: That was seven years ago now.

Mr. Haggerty: You are right. Not too many industries have followed that principle. I think Inco has one of the better programs available. They catalogue the employees' work environment within the industry and can pretty well pinpoint it. You were talking about sintering and I am thinking of the Inco nickel refinery in Port Colborne where, if you go back and appeal, they can tell you almost the number of hours and number of years that person worked there.

I think of an incident that happened here--and I have appealed it--on the use of asbestos in the manufacturing of paint. I thought it would be worth while to appeal it because I do not think the board was aware of it. The Ministry of Labour did one test--I believe it was in 1973--in a period of about 20 years in operation of using asbestos in the mixing of paint. They made one inspection and they found the level way above normal. They would not tell how much it was, but they said it was above normal safety

levels that should be applied. There was only one inspection.

I said this morning that I believe the worker is entitled to know what hazardous material he is working with. I am not satisfied they can come back and say: "It is under a certain code number. I cannot give that out; it is our trade secret." They are denying that employee the right to know the hazardous condition of the environment he is working in. This has to be corrected in the act. That employee should be entitled to know what hazardous materials are in that environment. That is not given to him today. As much as it says in the Occupational Health and Safety Act, that is not being applied today. Industry says, "You are giving away our trade practices here when we give you the code of a certain chemical or certain substance that may be of a toxic nature."

Over the years the Ministry of Labour has been very lax in this area and this is why we have problems today in establishing claims relating to industrial diseases. It is because of the poor track record. I think the record kept by the Ministry of Labour has been totally ignored.

I remember my discussions with Dr. Ernest Mastromatteo, who is well known in this area. When some of these first claims were established with cancer in particular in the nickel industries, he was a great help. I believe he opened the door in this area. He is such a good man that I believe one of the industries grabbed him. He is no longer with the Ministry of Labour.

I suggest to you this is an area that committee members should be looking at. We should come in with some recommendations to say that the worker is entitled to know that information now.

I appealed a case of a person who came down with a lung disease, a respiratory disease, and died of lung cancer. It was unknown to me, but I checked it out further and found that he had worked in one of the uranium mines up near Bancroft. Dr. Ham's report said that for the average person who was employed in that industry from 1951 or 1952 to 1957, the life span was 10 years in that industry. The case has been allowed now, but it took quite a lot of work to get that information, to find out about the job he had up there. Of course, he was a driller, right out in the front where he could get all of it.

This is one area that I made a note on, and I think it is an area where many of the family physicians, as was mentioned here early this morning, should have better knowledge of industrial diseases. It is great for the industry to say, "We have the experts on our side," but I think the family physician, for a person going in with related occupational problems, should have all of the information provided to him because I think he can be a great help to that person.

There is one doctor down in Port Colborne who is good in this particular area. If he suspects it is work-related, he will let you know and he will back it up with evidence.

Mr. Sweeney: I am clearer now as to what you are recommending. To go back in your brief to page 2, under the

heading "Omissions" you make the observation, "No provision to enable an injured worker's family doctor to participate in the medical aspects of a claim or an appeal."

It is my understanding that at present the medical record from a family doctor is included in the worker's file and the worker does have the right to have his family doctor with him at an appeal. If I am wrong, would you please correct me and tell me what else you want done?

Mr. Heard: One of the difficulties is that in some cases a doctor may be a general practitioner and in other cases he may be a specialist. It depends on the weight the board gives to the advice of the doctor. In some cases that is very little.

The poor claimant gets in a squeeze play between two medical people having a difference of opinion, which he does not even understand. Until they quit arguing, he does not even know what he is going to get.

Mr. Sweeney: I can support your contention that the family doctor's medical opinion may not be given the weight it should, but as I read your suggestion here, it requests the right of family doctors to participate. It is my understanding they have the right to participate now.

Do you mean something other than that? If you are referring to the weight given to them, I think that is a different issue.

Mr. Heard: The weight given is part of it. Even if you brought the family doctor into a board hearing, I am not sure whether the weight would be--

Mr. Sweeney: I do not know.

Mr. Heard: I have done it and I gave it up. It is a costly effort going nowhere. The only doctor who might have some weight at a hearing is one who has titles. I have seen that. I have had reversals on decisions because the letters on the end of the name outbalanced those who made the decision. It is pretty hard to buck the system. It is that kind of thing that concerns us. It is something that has to be dealt with.

This is as important as the other point that is generally raised. When you are dealing with specifics in industry, regardless of what they are, I can say to you, gentlemen, we have a bigger problem nobody has tackled yet. The board certainly knows about it, and I am aware of it.

If you think that is scary, multiply it about 100,000 times on the synergistic evaluation of two chemicals on the human body and what it will do. That will scare you enough to quit. We have not even touched it. We have not even been able to deal with simple things like individual chemicals and what they do.

You can look at all that, plus the fact that in many cases when a guy goes to a doctor and the doctor says, "I think you have a terribly heavy cold," he fails to ask him if he was working in



an open hearth the day before. He fails to ask him if he has a little gum problem and he is working with lead. It goes on and on. I could recite dozens of stories, but I will not take the time because you have heard them all before.

It has not changed an awful lot. The problems in some cases are still there. In larger plants, they may not so severe but in smaller ones, there is still a tremendous problem. I get them from one end of the country to the other. The ones I receive are the ones everybody else has had a shot at. I am the last guy, so when I get them, they are in pretty good shape. I can tell you they are very difficult.

When you go to the doctor involved and ask, "Where are you on this?" he will bring out a raft of letters he has written to the board that have gone nowhere. I can give you an example, although it is not an industrial disease.

I had a situation not so long ago, maybe a year and a half now, where a girl was injured in the plant, legitimately. There was no problem in that she recovered medically. They could not find anything wrong with her shoulder. She went to three specialists, who could not find anything.

3:10 p.m.

I dogged it for 18 months with the specialists, until they got to the point where they would hardly talk to me on the phone. She had a problem, but nobody knew what it was. It was so simple after they found it, but in the process of all this she lost her job. It was psychosomatic, it was in her head--the whole bit.

The bottom line of it all, after a lot of struggling and argument, was that she had what they call a nerve root entrapment. When she tore her shoulder up, the nerve slipped under the scapula and it came back down and pinched the nerve. The shoulder cleared up, but the nerve did not.

It took me almost two years to get enough medical evidence to get the board to reverse the decision on the claim. Sure, once she had the operation it was corrected and she was paid, but she never got her seniority back. To add insult to injury, the employer came in and asked for relief because the doctor took too damn long making the decision; and he got it.

These are the kinds of problems, and they go on. That is only one I was involved in just recently; I can give you lots of others if you want them. But it is a complex situation; it is not clear cut. It is very difficult, but we have to deal with them one way or another.

I firmly believe, as Jimmy has said, that when you have four or five people in one operation starting to come down with a specific problem, whether it be a heavy cold, congestion or whatever, you had better start looking for something wrong. The trouble with our problems in this area is that they may be there today and they may be there for 15 minutes and not there for another week.



You can go in and test. A guy can complain of a condition right now, and if you do not get there right now and you go in and test an hour later, the condition has changed: there is more ventilation, a shift in the wind or someone has opened a window; but the guy has the condition.

If you have ever heard of meat-wrapper's asthma, all you have to do is go and talk and they will tell you. I was involved in another situation in which a fellow worked in a Dominion store. He wrapped meat every Wednesday and he had asthma at two o'clock in the morning every Thursday. It took a long time to figure that out.

They had an electric wire they used to cut the Saran, and he cut the Saran. The guy who found the problem, God bless him, worked for the ministry and is now gone. That is all it was: the fumes from the wire. The cure was simple: they made a little steel bracket to clean the roll and there was no more problem. It took 18 months to find it. There was only one guy involved. Who cares? But he is as important to me as 50 because I have to find the problem. It was a simple to correct the problem, but sometimes it is very complex.

In this case, as I say, we did find it through the help of the ministry. The board did not object to paying the claim once it was established that it was an industrial disease or problem, and that is where all of this comes in. If it falls under the act, you are in; if it is borderline and you do not have the medical evidence to put it in, then it is out. That is where we have great difficulty trying to find the medical equation to put it under the act as it should be.

As Jim said, in many cases we have situations where guys or even the board will not know until the claim has been filed, and he may have been carrying the problem for years. So they are not easy, and I would be very pleased if a nominal roll system could be developed on which the hazardous jobs are recorded.

If you went out in industry today and asked how many have recorded the toxic materials they have within their work place, they could not even tell you; the ministry cannot even tell you. It is pretty tough to deal with. We are working with it, but we have a long way to go. It is only through the efforts of committees like yourselves and the government who want to put restrictions on them that we do get these things done so we can track back and find the problems.

Mr. Sweeney: Mr. Chairman, can I move on to another issue, please?

On pages 1 and 2 of your brief you speak very strongly about the no-fault principle and your support for it. A little further on--I cannot remember exactly where--you make reference to the closing of the loophole with respect to judicial liability for executives.

One of the reasons up to this point why I think this committee has allowed this particular amendment is that it does

come under the general heading of the no-fault principle and, quite frankly, I as one member, at least, am reluctant to open that no-fault door unless there is something that is so grossly negligent that it is obvious to everybody. But as a general principle, I have some reluctance there. Once you start opening it, I am afraid that some judge somewhere will use it as a precedent to open it a little further and then a little further.

If there has been one consistent theme that just about every witness who has appeared before us has enunciated, it is that they do not want workers' compensation to go into the courts.

Interjection: No.

Mr. Sweeney: How strongly do you feel about that? Is it just one of your concerns? Do you feel very strongly about it? Do you share our concern that it may be opening a door and we have to be careful? Could you broaden your--

Mr. Martin: I would like to speak partially on what you are asking about. If the commission is considering the no-fault basis, it should also look strongly at the point that labour has always asked for a no-fault system, but it is not there. We are talking about delays. In my local alone there are 9,000 people. We have a lot of dealings.

I can show you case after case where guys are going on the welfare rolls. Thank God there is a union and a contract to get those guys on sick benefits because the board is not administering the no-fault policy. If that is to hold true, if they are going to give the executives of a company protection under the act, then they should also be making sure the board enforces the no-fault insurance the employers have to pay, so that a worker does not have to wait up to six months for an appeal hearing to get his benefits.

In some cases--and I will touch on the board again--the administrators should be making sure that employers are following the regulations under the Occupational Health and Safety Act as well as this act to make sure that workers are not being injured.

There are some flagrant cases of negligence by the executive officers of companies who absolutely refuse to follow these regulations. Because of the work load of the Ministry of Labour and what else occurs in the province, it is not being done. There are flagrant cases where a worker has no alternative but to sue an executive officer of a company because he is negligent under the Occupational Health and Safety Act and under the Workers' Compensation Act. That is why we speak to that.

To reiterate, if the board is going to enforce a no-fault policy, that is great, but if not, executive officers of companies should not be allowed off the hook if they are negligent under either act.

Mr. Sweeney: In your experience with respect to delays, are those delays because of someone trying to find fault or are

they because of an inability to pinpoint whether it is a job-related accident?

Mr. Martin: In my dealings, 90 per cent of the delays are because the employer or a representative of the employer is saying that the injury did not occur on the job, or they are disputing the case, or the board itself will not take the general practitioner's word that the injured worker sustained injury due to the job. That is what delays it. They want further evidence from an orthopaedic specialist or whoever with higher credentials in the medical profession, so we are getting away from the no-fault policy.

If you look at the description of no-fault and then look at no-fault motor vehicle insurance--for example, if I am in a motor vehicle and get a cervical strain and go to a general practitioner, my insurance company gives me my \$140 a week upon receipt of his opinion. Four weeks down the line, if they feel they need more authorization from a higher physician, they will do that, but they do not delay my no-fault insurance in the initial stages.

3:20 p.m.

That is not true with workers' compensation. With compensation, if the medical branch does not feel the investigation of the initial doctor is enough, it will delay the claim until it gets more medical evidence.

I have a case going now in which we have waited six months. We are still waiting for the surgical consultant from the board, and now it is going to the review branch, to make a decision about the guy. Until we get a decision either from the board or from the company, this guy is out of luck. He has to go on the welfare rolls.

Where is the no-fault coverage coming in? It is not. We are losing it slowly.

Mr. Heard: If I could just add a point to that, it is not as open as it appears. Even if a person decides he wants to sue, he certainly has to go through the board to clear that, even as it stands now. I am not of the mind that it is opening something that is not closed. I do not know if it has really been tested.

It may be something the legal people, when going through and reviewing everything, have decided: "Maybe there is a little loophole here. We should plug that."

Doug Cain may be able to tell you, but to my knowledge I do not know where there is a case of a suit that has been done unless it has been cleared and okayed by the board. I have had one in recent times where the application was made to sue and the board had to make the decision that they may or they may not. That is the board's jurisdiction.

If the board says, "No, we do not feel there are grounds,"



or whatever reasons they want, then that is it, you just do not sue because they are protected. It may be, in the opinion of the legal minds at the board and other places, that there is a small area here that may be tested in the courts and may not hold up. That I cannot tell you. That is out of my field. That is what it appears to me.

In following John's point, even if there was a suit anticipated, with the exception of the third party liability, and I do not think that is what you are talking about, that simply has to go to the board and the board will make the decision. The guy does not have the right to up and sue. It is not that simple. He has to go through the channels. That is a protection.

Mr. Sweeney: You mention in your brief on two or three different occasions, page 6 for one, the potential misunderstanding of what "net earnings" really means or how it is going to be interpreted. In our earlier discussions, I thought I understood that net earnings include the deduction of income tax, Canada pension plan premiums and unemployment insurance premiums, but that is all.

Is there anyone who can clarify that for me? Doug, do you know if it means anything other than that?

I do not think it includes the deduction for other kinds of benefits, noncompulsory benefits.

Mr. Cain: No, the proposed act as it is worded indicates we take the gross earnings by determining the nominal rate that the person is earning and deduct from that the probable income tax, the probable CPP and the probable UIC. That is net earnings.

Mr. Sweeney: There are only three deductions, in other words?

Mr. Cain: Yes.

Mr. Lupusella: Some kinds of insurances can be included as well, eventually.

Mr. Cain: The proposal here simply talks about those three items.

Mr. Sweeney: It was my understanding that it was only those three deductions. Do you have some reason to suspect it may include something else?

Mr. Heard: Absolutely. It is not clear in the bill. You show me in the bill--

Mr. Sweeney: I do not know either.

Mr. Heard: --where you spell out clearly that is what you are going to do.

Mr. Sweeney: I know in our discussions that is all we had included, but I was not sure myself.



Mr. Cain: The first one looks at page 12, clauses 43(1)(a) and 43(1)(b).

Mr. Sweeney: I do not see those particular deductions listed, Doug. Am I not reading it correctly?

Mr. Cain: Page 14. Clauses 44(1)(a), (b) and (c).

Mr. Sweeney: Yes, I see it. Okay. Does that answer your objection or are you still uncertain?

Mr. Hickey: For one example, when you receive your income tax statement from the employer, there may be a figure of \$700, \$800 or \$900 that is added on to your actual wages and is received as a rated benefit.

Mr. Sweeney: That is an OHIP payment or something such as that? A taxable benefit.

Mr. Hickey: A taxable benefit. At the end of the year you are paying tax on that money; it is actually an earning attributed to the individual worker. So there is one item that is not included in the net value of the individual worker.

Mr. Heard: We said in this brief that this was a complex area. Let me throw some more bombs on you to show how difficult this is.

You say, "We take into consideration unemployment insurance, Canada pension plan, deductions plus income tax." Why do you want to tax me twice? I am going to pay on unemployment insurance when I collect it, and I am going to pay on CPP when I collect that. They are taxable items. Yet you ask me to take that off now in my workers' compensation as a taxable item. How many times do you want to nail me? I have trouble with this.

If you say to me legitimately, "I am going to take your tax, whatever the federal and provincial tax is, and then I am going to take the 90 per cent," that is fine because it is after tax. I have no quarrel with that as such, although I have some problems with it. But that is not what you are saying. You want to go into UIC and CPP.

There are other things my employer also takes off as part of my income that are not included in the net, such as the premium he pays for my pension plan and the premium he pays for my weekly indemnity. They are not in there. In the 90 per cent of the \$31,500 you are trying to talk to me about, it is not all there and it never has been.

If you want to know the truth, the board has never paid the total 75 per cent gross. It is no secret. We have made applications to the board 50 times on this issue. They have never taken into consideration fringe benefits, which are wages that were negotiated and deferred to pay the benefits. The guys never got credit for those, not to this day.

Now it is a new ball game, but they still want to play by the old rules in a new game. I am saying, "No, it is a new game

and we will play by new rules." The new rules are 90 per cent of my taxable income, period, if that is what you want to do. If you are going to start talking about CPP and unemployment insurance, then you are going to talk about my private pension and all the other things that go with it. You cannot have it both ways. You either come all the way around or you leave it alone.

This is why I said in our brief it was very difficult to deal with. I am not clear what was going on. I will tell you what Bill 101 says to me. It is really simple, and I have been at this a long time. They took out 75 per cent of the gross system and put in 90 per cent and they want to use the same system. It will not work. If you are going to pay me 90 per cent of my take-home pay, after tax, unemployment insurance and CPP, explain to me why you need an average. I do not understand, unless you are going to play around with gross because you have some problems.

You are going to take my normal rate and you do not even know it. You can take it by the day and multiply it by five, 14, 20. I do not care, because now we are not talking about anything dealing with bonuses or overtime. We are talking about straight, normal rates. What do you need averages for? I could not rationalize that.

We are saying in our brief, let this group come together and determine what you are really saying. Give it to us and we will give you our answers on what we think is wrong. It is very vague and I have learned from experience not to make comments on assumptions you make that are not there, because you get burned. It is not clear enough. If you clarify it for me, I will be glad to make comments; I will be only too pleased.

Mr. Chairman: Can I refer that, through Mr. Gillies, to the ministry? I can understand what you are getting at, but we have spent quite a bit of time on this and we have not got an answer today. I think it should be referred and clarified in time for our clause-by-clause discussion.

Mr. Gillies: We will get clarification and send it specifically to you.

Mr. Lupusella: And to us as well.

Mr. Gillies: And to you too.

3:30 p.m.

Mr. Sweeney: My last question has to do with medical records. The requirement under the legislation is that no medical record is shown to an employer without the employee first having the right to vet it and say, "I do or I do not think he should see this." You seem to be saying in your brief that the employee would have the right to a final veto.

I cannot imagine why any employee at any time should ever give such permission. Obviously the records could be used against him or her. Perhaps in some cases it would not be, but it could be. I sense that such a veto would be almost an absolute one. I am not sure whether it is workable legislatively.

My understanding of the legislation is that at the present time the board itself, after having examined the medical record and after having heard the employee's reasons for it not being shown, would make a decision. It acts somewhat as an arbitrator between the two. It seems, on the surface at least, to be the fairest possible way.

On the one hand, you do not give the employer anything he wants, much of which he probably should not have any right to. On the other hand, you do not give the employee an absolute veto, which theoretically he or she could use 100 per cent of the time. You have something of a balance there. For that reason, I would tend to support it as it is written.

Is there something else I am missing? I sense where you are coming from. Obviously, you have to speak for your own constituency, but I really do not see where it would be workable.

Mr. Heard: You say it is not workable. Would you believe it is working in other provinces? I have it in other provinces.

Mr. Sweeney: Where the employee has--

Mr. Heard: An employee had the absolute, sole right and refused. The employer threatened to take me to Supreme Court to get it. I said, "I will see you there." He never did.

Mr. Sweeney: That is not the point I am making. If we are going to give the employer access to medical records for any reason, then what I am trying to say--and I am probably saying it poorly--is that there is not much sense in leaving that in the legislation at all if you are going to give the employee an absolute veto. There is no reason for the employee ever to give that permission. Why should he?

What you are really saying is: "Take it out of the legislation completely. Take the employer's right to get access right out." That is literally what you are saying. I do not know whether that is what you intend.

Mr. Heard: That is what we would like, to have it right out. At the present time the board has the whole jurisdiction as to where that goes. This is just another leg up to get into a controversy between the claimant and the board as to who gets what.

Suppose the board says, "We think he should have this," and the claimant says, "No, I do not want him to have it." He is going to get it, whether or not the guys likes it. If you want to take that one step further and say, "If you take that to the new bill that has been brought down federally as to who has the right to an individual's medical record, with or without his consent," you may find that is a little touchy ground to play on because it comes right down to, "They are my records and I will decide where they go."

Mr. Sweeney: In other words, the privacy rights.

Mr. Heard: You bet. You are treading on a pretty open piece of ground. I am saying to you that, as far as I am



concerned, the appeal--this is one of those concepts that people just do not understand. When there is an objection to a claim before the board, the objection is between the employer and the board. Hell, the board made the decision. The guy sure did not.

Have you ever seen the claimant make the decision? If you have, I would like to know where it is. I have not seen it. The board made the decision originally. The employer may not like it, so the employer appeals. Then he wants all the medical records to build his case. I agree with you that if I were a claimant, he would not get them. If you went to a good lawyer, he would tell you the same thing. We are not playing games.

Mr. Sweeney: It is just too obvious.

Mr. Heard: That is right. The other way around is where the board has made a claim against the claimant in favour of the company and the employee now wants the medical records. Do you know he cannot even get them now, today? Do you know where I have to go to get them? I have to go to his doctor, because that is where they are sent. There may be something there that could be detrimental if the guy knew, so they leave it to the medical practitioner to make that decision. I do not really argue with that, because I have been at this too many times and I have read too many records I would just as soon not know about. That is part of my job, and I will accept that responsibility, but it can be a little bit of a problem. I can live with that.

On the other hand, I cannot see myself getting into a position where I could say, "Yes, the employer should have access to the claimant's medical records from the board without his consent," period. If he says no, it is no. I do not even like the way it is now where the board makes the decision, because I think it is wrong; tested with our new Charter of Rights, I am not sure it would stand up. I am not interested in spending a lot of money to find out either.

Mr. Sweeney: Maybe that is the way it should go.

Mr. Heard: That is something you are in a better position than we are to deal with.

But I do caution you that we feel very strongly about this. Medical information is the guy's own business. I have no quarrel with sharing it with the board--that is just and sensible--but no further than that.

Mr. Sweeney: I understand what you are saying.

Mr. Chairman: Mr. Laughren? No, I am sorry. It is Mr. Lupusella at this time.

Mr. Lupusella: There is no difference, Mr. Chairman.

Mr. Chairman: There is no difference?

Mr. Laughren: We speak with one voice.

Mr. Chairman: I have heard you guys arguing back and forth.



Mr. Lupusella: Mr. Chairman, I am going to be extremely brief. First of all, I would like to congratulate the delegation for an effective and very concise presentation before the committee. I do not have very many questions, because I really agree with the thrust and tone of the presentation of each particular clause and the position that has been taken by the union.

Having said that, I have a few questions that are more points of clarification than questions. They relate specifically to the industrial disease standards panel that will be established as a result of Bill 101. I share your concern about a registrar's office that looks after the kinds of chemicals the workers have been exposed to. We know as a result of past history that most of the time a lot of companies are reluctant to provide information even when the claim is made to the Workers' Compensation Board.

You should be aware that in phase 2 of the so-called reshaping of the WCB we are going to tackle the issue of industrial diseases. I do not know what kind of study will be made or what kind of law will be introduced by the Minister of Labour (Mr. Ramsay) some time in the near future.

Bill 101, as you know, is part of phase 1. I do not know when phase 2 will be introduced. Maybe it will be next year; we never know. It will deal with a new package of benefits for injured workers. Industrial diseases and so on will be dealt with accordingly.

But there is a need. I am not sure this committee has the authority to suggest that a main registrar's office should be established and that it should be incorporated in Bill 101, but I support the idea. Your position is good, and I think the government should be involved in looking at this specific process.

When you say the Ontario Federation of Labour should be consulted to appoint a representative on the industrial disease panel, are you talking about a specialized doctor who should be appointed or a representative of the trade union movement who should sit on that panel?

3:40 p.m.

Mr. Heard: We go both ways on it. On the appointment of people to the panel, yes, absolutely go through the parent body, which, as far as we are concerned, is the Ontario Federation of Labour. The affiliates to the federation will make whatever suggestions they make, as they normally do, through the chain of command.

As far as the doctors are concerned, again this is an area in which we think we should at least have some input on the choice of who they may or may not be. I am again making an assumption because, after the experience in British Columbia, Alberta and a few other provinces, I think you would probably wind up with a list of doctors who would be put on a panel or whatever way you want to handle it and when there was a claim or a problem, the guy would have three or four doctors to choose from.

Labour should be consulted on a list of people who are being suggested and should have an opportunity to say "aye" or "nay" to some for whatever reasons. That would be fair. Not to do it that way would mean you are getting into a situation where the affected parties have no say about what happens to them. That is something both this government, the labour movement and many other provinces are trying to get away from so the parties affected have the input and say as to how it is structured and set up. If we follow that trend, we will not go too far wrong.

Mr. Lupusella: In other words, your position is that before the Minister of Labour appoints the people, you would have to be consulted. You would have nothing against the Minister of Labour asking your opinion about doctors who are very well qualified in the field of industrial diseases. I am sure you know many doctors in your trade whose appointment might be recommended by the Ontario Federation of Labour. Either way, you accept such a proposal.

I have another point to raise. I do not have a disagreement; this is just a question of clarifying a position. There are certain clauses within Bill 101 which need further clarification. I support your position. There is a need for us to clarify the discretionary power of the new corporate board to draft the policies, to interpret the law that is before us, which is unfair. We know how the corporate board has been operating for 70 years and what kind of position it has taken to cut benefits for injured workers.

I make reference within the framework of the current act. For example, the board does not have any particular jurisdiction on the Canada pension plan but it is used as a bar within the present act to cut supplement pension. To enlighten committee members, this morning I received the policy which is in the hands of people who are taking positions on behalf of the injured workers to receive benefits in relation to the issue of people applying for CPP at the same time they are asking for a supplementary pension.

Take a look at the paradox spelled out as a result of the policy currently implemented. There is no specific clause within the current act which gives authority to the board to deal with this issue. The policy which people employed by the board have in their hands by which to decide the level of benefits for supplementary pensions reads as follows:

"An application for a disability benefit under the Canada pension plan has no bearing on the decision to award a temporary supplementary benefit, provided the worker meets the approved criteria. The board's representative will explain during an interview at the time of the permanent disability evaluation that receipt of a Canada disability pension has an adverse effect on temporary supplementary benefits."

What a paradox. First, they are told there is no bearing at all. Then when the worker is to receive a temporary disability award, an official of the board has to explain to the injured worker that the Canada disability pension application is working adversely for the injured workers if they apply for supplementary benefits.

I raised the issue with the Minister of Labour to clarify the position. We are again confronted with a policy which plays two ways. What is the general thrust of this position in relation to the policy-making process of the board, reading the concept that is clearly spelled out in the policy criteria for Canada pension plan? Why is it written that an application for disability benefits under the CPP has no bearing on the decision to award temporary supplementary benefits, and then up to the time when an injured worker is receiving permanent disability awards, it is explained that an application for CPP works adversely to the injured worker for supplementary benefits?

Mr. Cain: The policy reads that an application, as you say, for benefits under Canada pension plan has no bearing on the decision; but when they are spoken to by a board representative, the representative explains at the time of permanent disability evaluation that receipt of Canada pension plan benefits can play an adverse effect on temporary supplementary benefits.

The B part states that receipt of pension benefits under the Canada disability pension plan demonstrates that the worker is not available for employment, since such pensions are granted on the basis that the applicant is incapable of following any gainful employment. That is the reason. It is the difference between applying and receiving that is being put in there.

Mr. Lupusella: The reason I am raising this is that the Union of Injured Workers got one version from the board, and the Minister of Labour stated that there is no bearing whatsoever on receiving CPP but the board has the power to decide. I see some sort of contradiction on the issue, which is not clarified yet.

Mr. Cain: Are you saying that I am--

Mr. Lupusella: No, not you. I am questioning the policy.

Mr. Cain: This is the policy that, as far as I know, has already been initiated.

Mr. Lupusella: The policy is very questionable.

Interjections.

Mr. Lupusella: This is an example the union is concerned about when particular clauses within Bill 101 are not clearly spelled out. If the corporate board is going to draft policies, I am sure the policies are going to work out in such a way that benefits for injured workers in a general sense will be cut off.

Mr. Gillies: I appreciate what you are say, Tony, but I am sure you find in your riding, as I do in mine, that when someone applies for a Canada pension it can take more than six months, six to eight months, before it gets approval. What this policy is saying is that we do not want to hold people up when it takes that long anyway to get one, if they are going to apply for such a pension, but at the same time we do want to caution them that if they are successful in receiving certain types of WCB payments, it could be adversely affected.



Mr. Lupusella: That is why I want to give credit to the union concern that certain clauses contained within Bill 101 should be clearly spelled out rather than leaving the whole matter up to the discretion of the board to draft a policy to interpret the particular process of Bill 101.

To go further than that, if we have a law, which is the Workers' Compensation Act--and I do not want to make any difference between Bill 101 and the present act--why do we need a board to draft policies to interpret the act? The act should be written in a way that leaves no loophole for a different interpretation. The corporate board, whoever it is going to be, should not have the option to interpret the law and come out with different policies that were not contained within the principles of the law when it was first enacted. That is why injured workers have been crying and the trade union movement has been extremely upset about the application of the law of the past and the law of the present.

Mr. Haggerty: What he is saying is that if you look at the American way of drafting legislation, they have a preamble included with the bill, and it is clearly understood by the public what the intent of the legislation is.

3:50 p.m.

Mr. Gillies: As you know--please do not let me lecture you on law--most important pieces of legislation have quite considerable numbers of regulations that have to do with the administration of the law. In a sense, we could say that the Workers' Compensation Board is setting the regulations for the implementation of the Workers' Compensation Act.

We might debate whether it would be preferable for the Ministry of Labour to draft the regulations which delineate the workings of the board or whether it is better for the people at the board who actually do the administration to do it.

Mr. Lupusella: I would prefer it to be in the regulations and the Minister of Labour to be accountable to the Legislature. At least I have an opportunity to question the minister's regulation about the interpretation of the law rather than waiting 70 years and coming out with the specific position that the WCB must be reshaped.

Mr. Gillies: Yet at the same time, with respect, we have had delegations before us questioning the closeness of the process to the ministry and saying they would like it to be more of an arm's-length type of operation, removed from any hint of politics, etc. We get both sides of that argument, too.

Mr. Lupusella: What a disaster after 70 years.

Mr. Laughren: Putting it in the hands of Lincoln Alexander is removing it from politics, is it?

Mr. Gillies: In a sense, yes.



Mr. Laughren: I see.

Mr. Lupusella: It is government practice to use this type of approach. In the government white paper, for example, we were talking about a limited right to go back to work. In the Quebec workers' compensation act they are talking about workers' rights to go back to work. It is clearly spelled out in their legislation. The injured worker does not lose seniority within the meaning of the collective agreement that is applicable to him, uninterrupted service within the meaning of the agreement. They were not afraid to use the words "workers' rights" within the legislation. The government white paper was talking about limited rights.

I questioned the legality of the wording once when we were debating the white paper position. I asked, "What is the meaning of 'limited right' for a worker to go back to the same job?" There is no legal interpretation. Let us talk about a worker's right to go back to the same job before getting injured and we spell out the clauses which explain what kind of rights the injured worker must have to go back to the same type of employment.

Here, talking about workers' rights is a sin. Let us not talk about limited rights when there is not even a legal interpretation about such words. It is government practice to use this type of wording without having any respect whatsoever for the workers.

I do not want to raise any other question. Again, I would like to convey my appreciation for your effective presentation. I do not have any disagreement with the position you have been taking. You deserve full merit for your strong position.

Mr. Heard: Mr. Chairman, I would just like to expand a little bit on the question that was raised about the situation we are into on supplements. This is old hat, as Doug knows.

One of the difficulties and what people surely do not understand in this area, is something on which the board and I do not agree. That is for sure. We have been fighting about this since day one. If a man gets injured and it is a long-term situation--18 months or a year--he may make application legitimately under the Canada Pension Plan Act and get it. As you said, it may be six months down the road, but he gets it. It is backed up. Fine. He gets it along with his compensation and there is no problem so far.

When the guy has recovered to the point where he can be rehabilitated to go back to work, that is the point where the board and I get into trouble. The board says to me: "But he is saying to us that he is able to go out and look for work and get back into the work force and so forth and he wants the supplement to help him do this. On the other hand, he is telling the federal government, the Canada pension plan, that he is totally disabled." That is not true.

He was given the Canada pension award based on the application made and the medical evidence. As I have said to the

present chairman of the board, and the one prior to him and prior to that, what the Canada pension plan does between the claimant and itself is none of the board's business. That is between the board and the member who has made application under the Canada pension plan. If the Canada pension plan sees fit to carry that extension for three months, six months or 10 months, it is none of the board's business. That is between the man and the federal government.

The board should look after its own affairs and look after the situation. Its job is to rehabilitate him to go back to work. The fact that the federal government is still paying him Canada pension is none of their business, and I have not changed one inch on that argument. It is as flat as that.

Mr. Haggerty: The policy of the board is that in many cases the board will pass the information back to the injured worker who is coming up for pension assessment. The very first thing it says is, "Have you applied for Canada pension?" The person says, "No, I have not." "We suggest that you apply for Canada pension."

What the board is then telling me is that person is totally disabled, but is being given a measly pension of 20 or 15 per cent. They have two versions here. I was surprised in trying to interpret it with the representative from the Workers' Compensation Board, but I know it is a fact that they tell the injured worker: "Go to Canada pension, and if you cannot get it there go to welfare. That is all you are going to get from us." Yet the person can be totally disabled.

Mr. Lupusella: It is difficult to solve that.

Mr. Haggerty: They cannot have it both ways. There should be some clarification from this committee. Either you are going to permit the stacking of Canada pension when a person is considered totally disabled under the Canada Pension Plan Act--that means he is unemployable, he is not going to get himself a job and the board says, "You have a pension rating of 25 or 30 per cent." Some get in at around 30 per cent. He is almost disabled then. We should be making a decision here. I see nothing wrong with--

Mr. Chairman: Mr. Haggerty, perhaps we can do that in our clause-by-clause discussion.

Mr. Haggerty: I just want to drive the point home.

Mr. Chairman: We have only a few minutes left to ask questions of the delegation. You are my next speaker. Do you have any questions of the delegation?

Mr. Haggerty: I am just suggesting that the board cannot have it both ways and neither can the industry, because when a person is considered totally disabled under the Canada Pension Plan Act it should apply to workers' compensation. If we are going to permit stacking, it should be there, but it should be based on the factor of 75 per cent, based on the old act. Seventy-five per

cent of his lost earnings should be taken into consideration.

An industry will tell a person his services are no longer required and it is putting him on a pension disability of 50 per cent of his wage income at the time. They may be taking home 50 per cent less or 30 per cent or something like that, \$200 from the workers' compensation, but it is still a long way from 75 per cent of being totally disabled. That is the answer this committee is going to have to come up with.

Mr. Laughren: Most of the points I was going to raise have been covered, but one--

Interjection.

Mr. Laughren: I said "most."

I want to reinforce your concerns about 90 per cent versus 75 per cent. Of all the changes, that is the one that is saving the board money. I think it is \$11 million a year. When you see that, you know it is not going to benefit injured workers. What will happen is that some will possibly be better off. I believe some of the people at the bottom end of the scale will be better off. Most at the top will be worse off. It is the old story of having one group of injured workers subsidize another.

Mr. Heard: It is robbing Peter to pay Paul.

Mr. Laughren: That is right. I think your trip was worth while because of your approach, the comments you make on the 90 per cent versus 75 per cent. I think the committee will have to take a much more serious look at it than we have done to date.

4 p.m.

One or two groups that appeared before the committee expressed some nervousness about ensuring that an injured worker may return to his or her old job when returning to work, that you could run into trouble with the union representing the workers at the place of work. I think it was pretty well disposed of, but there is no way that can cause a problem, is there, if you are replacing somebody else who has filled in temporarily?

Mr. Heard: We would have to know specifically whether he is going back to his old job; that would be number one. Then, of course, it would be dependent on seniority. But, in the main, I think in the labour movement at least--and I can speak for the Steelworkers, for whom I work--we have over years, as you know, tried to create within the locals jobs where disabled people, whether it be compensation or personal things, can go to rehabilitate and gradually get back in on the main floor.

There are times when we do get a bit of a jam-up and run into a few problems, but I personally do not really know of any situation we have not been able to work ourselves through by sitting down with the management ourselves to work out a problem. Occasionally you just get more people who need rehabilitation on lighter work than you have jobs; you have a certain number of



them, and sometimes you are in situations where guys can never go back to specific jobs, so there are seniority problems.

In most cases I would say that yes, we have worked around them. There are problems. I do not know if, in my mind at this point, I could say to you that you can drop back right in line and everything is going to work exactly both ways.

Mr. Laughren: But you could live with legislation.

Mr. Heard: Sure, I have no problem with it.

Mr. Guillet: There is a point, Floyd, too, that a great many of our contracts guarantee that right.

Mr. Laughren: The only other question I had was that when you talk about the omissions you say, "No revision to section 54 to guarantee access to nonmedical rehabilitation."

Why do you have that in there? Right now, as far as I know, every injured worker has access to rehabilitation. I do not know whether you are referring here to the kind of rehab you think they deserve but are not getting. I do not quite know what you mean by that, because I think they have access to rehab now.

The only thing I can think of is that I have had problems with the board in the past when I felt that the smaller the degree of disability was, the more difficult it was to persuade the board to take a rehab program seriously. The board denies it, but I have always felt that way. I do not know whether that is what you are getting at or not.

Mr. Heard: What we are talking about is nonmedical rehabilitation.

Mr. Laughren: Yes, so am I.

Mr. Heard: Upgrading, retraining, schooling, trade--stuff like that--and it just is not broad enough.

Mr. Laughren: So it should be in the act, perhaps, that there is a guarantee of this. It is not in the act now, is it, Doug?

Mr. Cain: No. Section 54 of the act, which remains under the proposal, just enunciated the idea that every injured worker has the right to workers' compensation vocational rehabilitation assistance.

Mr. Laughren: That could be in the form of counselling.

Mr. Cain: Yes, it takes into account all forms.

Mr. Laughren: What I meant was that it could begin and end with counselling rather than in a rehab program.

Mr. Cain: That is true; that would be possible. Yes, you are quite right.



Mr. Laughren: What is bothering me in this is that just over the weekend I was up in a little community called Sultan near Chapleau. There was a fellow there who worked for E. B. Eddy Forest Products. He has been reduced to 50 per cent benefits because he can go back and do light duty, but Eddy, typically, has no light duty.

The board wrote him a letter, which I have, saying, "Because you do not want to quit Eddy Forest Products and go to another employer, you are being reduced to 50 per cent and we are going to assess you for a pension." He has a serious shoulder problem. He was a bush worker.

Here is a situation in which the board has offered him no voc rehab, and yet here is a person who has spent his life in the bush. He is a Franco-Ontarian.

This is where I have trouble. I think the board should not be allowed to do that. Do you know what it is putting that man and his family through with this letter? He does not know where to run; he does not know what to do at all. He has seniority at Eddy. Is he supposed to quit, given the labour market out there? This is the kind of thing that really bothers me about voc rehab at the board.

That is not guaranteed under the new act, either.

Mr. Heard: If I may, just to partially answer that, that is part of our concern. There seems to be a lack, on the vocational side, of retraining within the system. What I mean by that is if the guy has worked in an industry for 14 years, maybe he has done only one job but he has a powerful amount of knowledge of the operation of that particular plant. The company may not have a specific light job that he can do at that time.

We also realize the complexities of upgrading or retraining him. But certainly with the background and knowledge he has of the operation of that firm it would be money well spent to upgrade him to a job in some other area of the plant that he can do within the confines of that disability. That is a problem. Sometimes it is because the companies are very reluctant to even try it.

The board gets into a position of saying, "Should we retrain him for something the company is not going to give him?" Again, it is not simple black and white. It is a complex matter. As I say, if the souls are willing and they work hard enough, you can do anything, but if they are not, it will not work.

I relate to you the long procedure we have had in trying to solve the federal-provincial jurisdiction problem in uranium mines. It was hard, but we finally managed to do it. I think that is going to be proven out in the long haul.

In these kinds of matters, you have much the same situation. If the employer really wants to work at it he can take advantage of the training he has given the guy, even though it may be in another area. Otherwise, you throw money away. But try to convince him. All he can see is product. "He is not doing it, boy; he is

running only 40 per cent. I want a 100 per center." He does not care what he has invested.

The narrow-mindedness of the thing perplexes me no end, because they do not look at the long process. I do not know how you get around that. I am with you, I wish I knew.

Mr. Laughren: Perhaps the board should take a longer-run view of the process too. The best way to get this person off the board's rolls is a retraining program so he can do his thing then. He has 20 years to go on.

Mr. Lupusella: That is asking too much from the board.

Mr. Laughren: Anyway, thank you.

Mr. Chairman: Thank you, Mr. Laughren. I think that ends the questions. I would like to thank the delegations for appearing before us. Your advice and assistance will assist us in our deliberations.

Mr. Heard: Mr. Chairman, there is a question one of the members of the group would like to put before the panel, if it will be permissible. It is John Martin. It is dealing again with the average in the schedule.

Mr. Martin: I would like clarification on the proposed subsection 44(2), where it states: "The board shall on the first day of January in each year establish a schedule setting forth a table of net average earnings based upon the provisions of this section and such schedule shall be deemed conclusive and final." By not knowing what the interpretation of the board will be, they mention net average earnings all the way through Bill 101.

What do they mean by subsection 44(2)? What is the board's interpretation of that?

Mr. Cain: Prior to the first of each year, I understand the federal government puts out its tax tables. The board will take those tax tables and develop the tables they refer to here.

Mr. Laughren: For each income group?

Mr. Cain: For each group, single worker, worker with spouse, worker with spouse and one child, etc., on through, so that they are prepared for the following year.

Mr. Martin: That leads me to believe then that in schedule 1, which the steelworkers would fall into, we could find ourselves in the situation that if the board deems it, they could take that average and they could label that to a worker instead of using the other provisions of the act. Is that true?

4:10 p.m.

Mr. Cain: The intention here is not to average earnings and say steelworkers make X dollars per year and people who work in the meat industry make Y dollars. That is not the purpose of

this. The purpose is simply to set out these tax schedules and to set out the allowances for single workers and, as I say, workers with a spouse or with children and the allowances that are made for those types of social situations within the family. As you know, you are allowed certain tax benefits based on those things.

Mr. Martin: I understand that, but the language of that section says "average earnings." You are not speaking to average taxation amounts.

The problem I have, and I am speaking for Local 1005 in Hamilton at this time and I hope for the rest of the steelworkers, is the board could interpret that so we find ourselves in a position where we may have to appeal that very section. Somebody on the board may deem the average net earnings of a certain individual on the basis of these schedules. That is what the language is saying. You are not speaking of tax averages, but about average earnings. If you mean tax averages, then the language should exactly reflect tax averages, not average earnings.

Mr. Cain: But it does specify net average earnings based upon the provisions of this section. The board is limited to utilizing subsection 1 in order to do what subsection 2 talks about. The board cannot go outside the section. It cannot take other things into account. It must limit itself to that section.

I might add that previously, when the committee met, the board provided through our actuarial services examples of tax tables from previous years and how they would be utilized, showing single worker, single spouse, etc. The information has been provided, and the only thing I can say is that this section limits the board to doing what it states the board must do.

Mr. Laughren: May I ask a question on that? I do not know whether it will clarify this. Is it not saying that if a worker is injured and has temporary total disability and that worker's income works out to \$22,000 a year, the board says on a gross of \$22,000 it will deem the net to be \$18,000?

Mr. Cain: Based on the individual's tax status, his family status. That is precisely what it is saying.

Mr. Lupusella: Why do they (inaudible) the earning basis of the individual later on?

Mr. Laughren: I do not understand John's concern.

Mr. Martin: Mr. Chairman, the language does not state what the board is interpreting it to state. If it is saying the table of net taxation schedules--that is what he is saying but that is not what the language is saying. The language is talking about average earnings, not average taxation. It is not even speaking to clauses (a), (b) and (c) which talk about taxes, Canada pension premiums and unemployment insurance premiums.

Mr. Laughren: --average deductions.

Mr. Martin: Yes, exactly.



Mr. Lupusella: And they do not take a look at the specific earning basis of the individual up to the time when a person gets injured. Why do you need the average?

Mr. Cain: We take the worker's actual gross earnings based on a previous section of the act. We know that worker is single, for example. We go to the tax table that has been developed and we look at the taxable amount of those earnings, say, \$22,000. If it says for a single worker there must be a deduction of \$3,000 for taxes, then that is deducted. Then we deduct CPP and unemployment insurance and that gives us net average earnings. We call it net average earnings. That is all.

Mr. Martin: It is not clear, because my net average earnings are going to be different from these.

Mr. Cain: That is right.

Mr. Martin: The language, and you have to pardon me if I seem to be thick-headed, should say--the tables that come from Revenue Canada speak of net income taxes for certain groups. I can see what you are doing, but you should say there should be a table of net deductions based on the provisions of that section. You are not saying that. You are talking about average earnings. You are not talking about taxation. We may both be saying the same thing but the language is not reflecting what the board wants to implement.

Mr. Cain: This subsection is stating the result. I believe you are stating the process to get the result.

Mr. Martin: Yes.

Mr. Cain: Subsection 1 describes the process.

Mr. Laughren: May I make a suggestion in view of these comments? I did not understand at first, but I have that same sense of unease that they are not talking about average deductions from that income level. They are talking about average earnings, which is bound to make people nervous.

Why do you not have your legal beagle, either that or the legal counsel for the ministry, take a look at that section and see if it worded the way it is supposed to be?

Mr. Chairman: That is fair enough, either that or the legislative counsel could look at that.

Mr. Laughren: Or both.

Mr. Chairman: Or both. Maybe we could average the two opinions.

Mr. Sweeney: How many opinions do you want?

Interjection: One.

Mr. Sweeney: Then you can take the average.



Mr. Heard: Mr. Chairman, I will part on this one note. There is one other situation, and I am surprised employers have not raised it because it is going to be a situation where they are going to make overpayments continually and they will not get it back.

If you look at Canada pension plan payments and if the board deducts it and the man has already paid it, the man, when he submits his income tax, will get his portion of the 1.8 per cent. The employer will not get his.

I cannot understand why they would want to pay something they do not have to pay. When you get into the tax bracket of around \$30,000, that CPP normally is paid up during the first six or seven months. But if you make payments beyond that, which, in fact, is what the board will do--never mind all the other things we have said in the brief--they are going to be making overpayments of 1.8 per cent on every claim. Let them work that out and then come back and tell me they are concerned about money.

It is nonsense. It really is. The employer can tell you within a half a penny what that guy's net earnings for the previous pay period is any time you want to ask him. You do not need averages. It is just another bookkeeping thing you do not need at all.

Mr. Chairman: Thank you very much. We have some comments from Mr. Cain answering some questions that have been raised by the committee in the past. How do you want to begin, Doug?

Mr. Cain: I just want to respond to some of the questions that have been asked of the board over the last few days.

The first question was whether or not vocational rehabilitation counsellors have quotas they must meet for closing claims. My response is that the voc rehab division does not have a policy, written or otherwise, that directs rehab counsellors to meet a certain quota for closing voc rehab assistance. As a matter of fact, before assistance can be stopped, a recommendation to take such action must be countersigned by a senior rehab specialist or an administrator.

Mr. Lupusella: May I ask a question?

Mr. Chairman: You are answering, you say, or asking?

Mr. Lupusella: Asking. Did you complete the statement or you want do you want to go any further?

When the rehabilitation file is closed and the injured worker goes back to the rehabilitation department to request further assistance, he does not have the opportunity to go directly to the rehabilitation department, even though I understand there are two rehabilitation counsellors on the seventh floor to receive inquiries from people who are going there to request rehabilitation assistance.

When this type of injured worker is going there and they have the rehabilitation file closed, why do people employed on the second floor tell injured workers his file is closed and not give him an opportunity even to talk to one of the two rehabilitation counsellors sitting on the seventh floor to receive this type of inquiry?

Mr. Cain: I do not know the precise policy, but I would imagine the policy is that if a worker comes in to discuss why the claim has been closed, they obviously have the right to discuss it.

4:20 p.m.

Mr. Lupusella: No right. The claim has been closed. The claim is not active. Regarding the issue of rehabilitation, if the individual feels much better maybe after four or five months and he wants to make himself available for light job and so on. He goes to request further rehabilitation assistance and the people employed on the seventh floor do not give him a chance to consult one of the two or three rehabilitation officers who are sitting on the seventh floor to deal with that type of inquiry. Why?

Mr. Cain: I do not know, as I said, the exact policies of the individuals on the seventh floor. I assume one of two approaches is taken. Either the worker has the right to discuss the situation with the individual on the seventh floor representing the vocational rehabilitation division, or the worker has the right to talk to the vocational rehabilitation counsellor directly, because he has been involved with that person before, to discuss further activity on the claim. One way or the other, the worker has the right to discuss further activity on his claim.

Mr. Lupusella: That is not happening, even though you are elaborating on rights for injured workers. Workers are coming to the local MPP. The local MPP has to call the person in charge of the rehabilitation department. He explained to me that is why three rehabilitation officers are on the seventh floor for this type of person. Their file has been closed and they can go there to receive further rehabilitation assistance.

The people on the seventh floor who are receiving the inquiries say: "Go back. Go home. Someone will call you." The injured workers are never contacted. They have been coming to complain to me. The only liaison approach I had was to call the head office of the whole rehabilitation office. They said that the policy is as you have told us, but it is not implemented. I do not understand why.

Mr. Cain: Next point: The board was asked to check whether other jurisdictions had established policies or legislation requiring employers to recall injured workers. To the board's knowledge, in North America there are no other boards or commissions that currently have such legislation in their acts. I handed out today copies of pages from the proposed Quebec workers' compensation bill, which relates specifically to the subject.

Mr. Lupusella: I misled the committee. I did not pay

attention to the wording, "proposed legislation." I was of the opinion it was in the act.

Mr. Cain: Another matter: Referring to a letter from actuarial services to employers dated June 15, 1984, the question was asked, "Does the factor as full funding now mean the discount rate for capitalized values will be two or 2.5 per cent instead of seven per cent as it now is?"

The response is that what is stated in the letter is the objective the board is trying to achieve. We are obviously not at that level of funding yet. Of course, the whole subject of commutation and the per cent discount rate will be reviewed by the board as we move towards the objective.

Mr. Lupusella: Is there any particular clause I can refer to that gives the authority of the board to use seven per cent rather than two per cent within the meaning of the present act, or is it just a matter of policy adopted by the board without being given any legal authority by the act?

Mr. Cain: The act itself gives the board the responsibility and power to collect money from employers and, under certain circumstances, to provide commutations to injured workers. Within those rules, the board, when collecting money from employers, has to take into account the opportunity over X period of time to earn interest and, on the basis of that type of actuarial knowledge, have a discount rate to apply.

Mr. Lupusella: Is seven per cent an arbitrary figure chosen by the board or is it within the legal mandate of the board to set up the seven per cent because of power given by the present act? Can we get a legal interpretation of that?

Mr. Cain: As I understand it, in the financial community seven per cent is an amount used as a discount rate under the circumstances in which the board collects assessments and pays out commutations.

Mr. Lupusella: You are talking about the financial community, but the Workers' Compensation Board is a quasi-judicial body established within the meaning of the act. Why does it not follow the two per cent discount rate rather than take in a very arbitrary way a figure that is used by the financial community?

Mr. Cain: We never used the two per cent rate, because the act did not have automatic increases in benefits to injured workers built into it.

Mr. Lupusella: Can we get a legal interpretation of such authority used by the board? Why did it not follow the figures used by the courts, considering that the WCB is a quasi-judicial body? Why did it take into consideration the seven per cent discount rate that is used by the financial community?

Mr. Gillies: I just do not know the answer to that question, Mr. Lupusella, but we could certainly get an opinion



from the legal services branch of the Ministry of Labour. I will undertake to do that.

Mr. Lupusella: Okay.

Mr. Cain: The next question was, "How did the June 15, 1984, letter from actuarial services come about, and why was there no covering letter from the chairman?" There was no other correspondence and, as I explained previously, the letter was sent out only after extensive consultation with many employer groups.

During those consultations many matters were discussed. Therefore, it was not necessary to explain the purpose of the letter to the employer groups since they knew it was on the basis of the meetings that had taken place. Certainly safety is something the board discusses whenever we are with employer groups, as we do when we are with injured workers' groups; so that aspect would also have been discussed.

Mr. Lupusella: I want the record to show that it was very rude of the chairman not to attach a covering letter to such notice.

Mr. Cain: The other question was, "Generally, what have the responses been from industry to the letter?" There really have been no specific individual industrial responses.

Mr. Lupusella: Unbelievable. It means they are pleased with what the committee is recommending in relation to increasing the benefits for injured workers. If they are not reacting, it means they agree.

Mr. Cain: I have no other responses to questions. At a later date I will provide you with those.

The Vice-Chairman: I think we have had a fairly good explanation on some of the questions that were posed a little earlier in these committee meetings. Are there any other discussions before our adjournment?

Mr. Lupusella: I would like to thank Doug for the mission he has undertaken to give us the answer, and I am going to make sure my criticism in the future will be easy for the chairman of the board to swallow.

The Vice-Chairman: You are on a mission, Doug; quite obviously it has been recognized as such.

This meeting now stands adjourned. We all know where we go tomorrow. Some of us go to the far north and some of us go to the near north, but we all go north.

The committee adjourned at 4:29 p.m.





CA 24N  
XC13  
-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, JULY 31, 1984

Morning sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Lane

Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

Witnesses:

From the Council of Ontario Contractors Associations:

Bulmer, J. C., Secretary

Elgie, M., Chairman, Workers' Compensation Committee

From the Provincial Federation of Ontario Firefighters:

Hastings, E., 13th District Vice-Chairman, International Association of Firefighters

Smith, G. R., Chairman, Workers' Compensation Committee;  
Secretary, Mississauga Firefighters Association

Thrower, K. R., Member, Workers' Compensation Committee  
Weech, R., First Regional Director

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, July 31, 1984

The committee met at 10:10 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: Committee members, if you will take your places, we shall proceed with our morning's activities.

Mr. Laughren: Mr. Chairman, I wonder if you could make a point some time today about the clause-by-clause scheduling, because I am sure I am not unique in that I am already trying to plan my month of September and I do not quite know where it is at.

Mr. Chairman: I think we were originally scheduled to start on September 4, but there is another function going on in the country that particular day that may take some of our people away from here.

Mr. Hennessy: It will be a day of mourning.

Mr. Riddell: It is a foregone conclusion.

Interjection: You are right, Mickey; it will be a day of mourning for Mulroney.

Mr. Chairman: Gentlemen, let us not be provocative towards one another.

Mr. Sweeney: He started it.

Mr. Chairman: Sorry. I agree with you, Mr. Laughren; we should. The other thing we will likely know when Mr. Arnott receives all the information is our travel arrangements tomorrow to Hamilton. We are going by bus, but we do not have the exact details yet. We will let you know that a little bit later on.

Mr. Laughren: Can we talk about that later on today then?

Mr. Chairman: Yes, we will.

The first witnesses this morning represent the Council of Ontario Contractors Associations. We have Mr. Elgie and Mr. Bulmer here representing that association. We have a second delegation this morning, so we will have to try to be sure that we reserve enough time to work in both delegations.

Gentlemen, we will let you kick off. We have your brief here. Proceed whichever way you want to proceed.



## COUNCIL OF ONTARIO CONTRACTORS ASSOCIATIONS

Mr. Elgie: Mr. Chairman, first, I would like to thank you very much for this opportunity of coming again. I would like to extend greetings to yourself and the rest of the committee members, ladies and gentlemen.

Mr. Laughren: May I congratulate you on your leaflet. The printer made a mistake on the picture they put on the front cover, but other than that--I know that is not your fault.

Mr. Elgie: Oh, okay.

Mr. Bulmer: What about the picture on the last page?

Mr. Elgie: We do our best.

Mr. Sweeney: Let us get on with the game.

Mr. Elgie: Mr. Bulmer and I were here last Tuesday, as a matter of fact, and sat through the proceedings of the Employers' Council on Workers' Compensation whenever they presented their brief.

This is the second time around for us, and I do not know how many times it is around for you. You have my sympathy for sitting and having to listen to all the presentations that have been made. I am hoping we can provide some food for thought this morning, in addition to what has been said in the past, and present what we feel to be the concerns of the construction sector from the viewpoint of the Council of Ontario Contractors Associations.

We are a member of the employers' council, as you are well aware, and we participated very greatly in the formulating and writing of their brief and also the presentation of it. That is the reason our brief bears so much resemblance to the employers' council brief.

There are several items we want to stress that are of particular concern to the construction sector, more so than the general employers' council brief had enunciated, but we do support the employers' council brief 100 per cent. I wanted to make sure that was the understanding. We are not here to counter anything at all. We are here to support and to try to build on that.

You have received our brief. Whether you have had a chance to go through it or not, I am not sure, but what I would like to do this morning, rather than read the brief verbatim, is to go through it and maybe make some comments on the individual sections in the brief in addition to the written word that is there.

The Council of Ontario Contractors Associations represents a large segment of the construction sector in Ontario through our member trade associations and construction associations. While we do not represent them all, we feel we certainly do represent a good cross-section and therefore can speak more or less on behalf of the construction industry.

One thing I would like to get on the record is that we wholly support the Ontario workers' compensation system. We feel it is a good system. We have been working very closely with the administration of the Ontario Workers' Compensation Board for the past several years and we have received excellent co-operation. We have found the dialogue to be very open and extremely helpful in arriving at solutions to some of the immediate day-to-day problems that have come up.

We look forward to continuing this association with the administration of the board and, indeed, with the ministry and the other people responsible for the operation of the board. There have been a number of studies. We have participated in most of them and have made representations before the various councils and so on. Now we are down to the committee before the actual legislation is formulated and, we assume, passed.

One of the things that gives great cause for concern to the construction sector is, as we have said before, the cost factor involved in any legislative amendments. We have voiced this before and we are here this morning to voice that same concern once again.

We recognize that injured workers have to be compensated, and we have no quarrel with that at all. We believe in the concept, but we are concerned that the available funds go to the most deserving. That is one of the things we would like to preserve. We look forward to working towards that end with the board and the Legislature in the future.

As to the cost impact on industry, in our previous hearing, several figures were bandied around when we talked about costs. There was discussion of workers' compensation rates and concern was voiced that the rates had come down, the rates were being suppressed and in actual fact the employers were getting a free ride on workers' compensation. Ladies and gentlemen, that is not the case. I am sorry. This morning we submitted, along with our submission, a sheet with figures on the increase in WCB costs to employers.

Mr. Sweeney: Is this construction only or all employers?

Mr. Elgie: This is the average rate for all schedule 1 employers.

Mr. Sweeney: All employers. Okay.

Mr. Chairman: These are probably the same figures we got previously.

Mr. Elgie: I am not sure whether you got the extension across to the cost per employee, which is the reason I wanted to table this document this morning. You will see from 1975 to 1984 the average rate for workers' compensation has gone from \$1.45 to \$2.17, which is not a horrendous increase. I acknowledge that.

When you take into consideration the increase in the ceiling for assessment dollars, however, the cost per employee to industry

has increased from \$195 to \$553 across the whole industry, which is a total increase per employee of 183 per cent. Over that same period, the consumer price index has only increased 110 per cent. So, in effect, you will see that the cost to employers per employee has exceeded the CPI by about 73 per cent and we have cause for concern about the cost factor.

Mr. Laughren: Where does it give the number of employees?

Mr. Elgie: It does not. The fourth column over is the cost per individual employee.

Mr. Laughren: Right, but there is no indication of how many employees there were or how the numbers changed.

Mr. Elgie: No.

Mr. Laughren: Would there be fewer employees at the end than at the beginning?

Mr. Elgie: I assume so. The work force has gone down some in numbers, but the cost per employee still determines the cost.

10:20 a.m.

The second document we submitted this morning in addition to our brief gave some more numbers. It is headed COCA, The Council of Ontario Contractors Associations, and it gives a further breakdown of the ceilings and assessment rates specifically related to the construction industry.

You will see we have only highlighted three rate groups there, 753, 854 and 864, which are the three major rate groups in the construction sector. I believe these three rate groups employ approximately 75 per cent to 80 per cent of the employees in the construction sector. It is around that grouping.

You will see that our rates are considerably higher than the industry average. In 1984, we are looking at \$9.52 as compared to the \$2.17 that is the average. That is for one rate group, with the other rates coming down.

Across the bottom is the dollar paid per employee in each year. In rate 753, it has gone from \$607.50 in 1975 up to \$2,427.60 in 1984 for the sewer, heavy construction, bridge-building sector.

That is a 300 per cent increase over that nine-year period.

Mr. Laughren: Excuse me. What is the relationship between that and the \$550? Is that the average?

Mr. Elgie: That is the average for all industry. The point I am making is that an increase in ceiling, or an increase in cost or any legislated increase in benefits that the Workers' Compensation Board may make has a tremendous impact on the

construction sector. That is why we have been concerned and have voiced that concern throughout. We still have it.

Mr. Laughren: You do not have here--would it be easy to do?--the number of accidents and severity of accidents. It is a little confusing to me; I do not know what that means. I do not know whether that increase in cost means there are more accidents, or more severe accidents or whether it is higher benefits.

Mr. Elgie: Over that same period of time, the frequency of accidents has come down throughout the construction industry.

Mr. Laughren: Does that mean fewer accidents?

Mr. Elgie: It means fewer accidents per 100 employees. The ratio has come down as well as the number of accidents, but the benefits have increased significantly. One of the main causes of that is the longer term that injured workers are staying on compensation.

Mr. Laughren: What about the severity? Do you not know?

Mr. Elgie: They are staying on compensation longer than they were 10 years ago.

Mr. Laughren: Are you saying that the accidents are more severe?

Mr. Elgie: I am saying that they are staying on compensation longer than they were before.

Mr. Laughren: The accidents were not more severe.

Mr. Elgie: No. There have been significant increases all across. On your sheet you do not have the percentages, but I have just worked them out. In 1982, for rate group 854 there was a 38 per cent increase in workers' compensation cost per employee in the one year. Those are the kinds of jumps we have faced in the past few years in the industry.

Mr. Laughren: Do you break down the reasons for those increased costs per employee? Do you know what proportion are assessment increases and how that relates to the kind of accidents you are having?

Mr. Elgie: That is a total assessment increase. That is assessment dollars. The compensation board should be able to give us the breakdown in the costs as to whether it is compensation costs, medical aid costs, rehabilitation costs or pension costs. I do not have those figures, but the board would be able to give them to us.

Going on through our presentation, page 2 gives you the breakdown of our membership and the people we represent.

I would like to move on to page 3 about the board of directors. Bill 101 proposes the establishment of a corporate board with an executive core and outside directors. The Council of



Ontario Contractors Associations supports that wholeheartedly. We believe that the Workers' Compensation Board in Ontario is a large organization, a large corporation, and should be run as such. We believe the board of directors should be elected from people who have the ability and knowledge to serve on that board and to run a corporation of that size with the budget it has.

We also believe the corporate board must begin to accept some fiscal responsibility for the operation of that board. If that were to take place, we believe it would alleviate a lot of the hassles you ladies and gentlemen have as politicians who are making the legislation and who tend to receive a lot of the problems dumped on your doorsteps by people in your ridings and so on.

We think a strong corporate board would go a long way towards resolving a lot of the difficulties seen at the board. As I said earlier, we think the board is a good one. We think it is well run at the present time, but we think it could be better. We would like to work with you and the new corporate board in trying to improve what we have now and build on the base we have already.

Mr. Lupusella: Mr. Chairman, may I ask a short question?

Mr. Chairman: Yes, but we do not want to make a habit of interrupting. It goes much quicker if we ask the questions at the end.

Mr. Lupusella: Okay, go on then.

Mr. Elgie: I am going to make some brief comments on the various sections and then I will be glad to answer your questions.

Page 4 of the brief, headed "Employee to Submit to Examination," notes that sections 21 and 22 of the Workers' Compensation Act have been repealed under Bill 101. We have grave concern that this has been taken out. Although it was used very little, we felt it was one avenue for an employer to keep a check--it was one of the checks and balances in the system, if you like--on the small percentage, as I mentioned earlier, of claims that give rise to concern.

The vast majority of claims are straightforward, they go through and there is no problem with them, but there is a small percentage that gives rise to concern. That was one of the checks and balances available to the employer. We request, in the strongest terms possible, that the section be put back in.

I would also refer you to a brief that was submitted on July 16. Robert Cronish appeared before the committee and submitted a brief. He made an excellent presentation on the restoration of sections 21 and 22 to the Workers' Compensation Act. With respect, I would request that you review Mr. Cronish's presentation. I just received it yesterday, as a matter of fact, and I feel it was an excellent presentation with respect to that section.

Mr. Laughren: We did spend quite a bit of time on it.

Mr. Elgie: Fine. Thank you very much.

On page 5, dealing with the temporary total disability benefits, we voice concern with the employers' council about the supplements being awarded to workers who had substantially recovered and were physically or medically able to return to work; however, there was no work for them to return to. They were not able to find suitable work to return to. Under clause 41(1)(b) of the current act, supplements can be granted in order to extend their benefits until suitable work has been provided.

We recognize there are situations when this is applicable, but in the construction industry--and I can speak with some background on this as I worked in the heavy construction industry for 17 years--construction is a seasonal venture. Normally, the traditional period of operation is from early spring until late fall. It can vary from March to December or from April to October, depending on where you are in the province and the type of construction you are working on.

10:30 a.m.

This is the small percentage of claims I was referring to earlier, where you have the crews who know they are going to be laid off and they are facing a winter on unemployment insurance or whatever else they do in the winter time. We traditionally had a certain number of suspect claims reported approaching layoff time. I would find that the rest of the crew would be laid off and they would go on unemployment insurance benefits.

The injured worker who had reported the workers' compensation claim--and maybe it was a legitimate claim at the time--had medically recuperated within a month to six weeks, probably, and could well have returned to work. However, in the construction industry there just is no work until the next spring and I would find that individual being supplemented throughout the winter on full temporary total benefits, whereas the other members of the crew who had not reported a workers' compensation claim were collecting unemployment insurance benefits, which are considerably lower, are fully taxable and not nearly as attractive as the workers' compensation benefits.

That is the one area where we have a very great concern; it is the reason we voice such a strong concern over the supplementary benefits. We feel that if you could get a handle on that, it would release enough funds that we could well address some of the other areas of concern such as higher benefits and higher ceilings. If we reallocate the funds to where they are needed, we think we can work within the confines of the system we have now.

Mr. Chairman: These--I will be able to hear my questions again too. Carry on.

Mr. Elgie: Okay.

Mr. Lupusella: I think we should raise some questions.

Mr. Chairman: You know what it does, it precipitates everything and we will never get through the brief. Carry on, Mr. Elgie.

Mr. Elgie: On to page 6, the earnings ceiling.

Once again, this carries over from my earlier comments at the introduction and I refer you once again to the cost figures that I submitted earlier. We recognize that in the construction sector there are traditionally some high wages paid and the individuals who do claim compensation do not necessarily get their full earnings under workers' compensation, but it is a seasonal occupation. The wage rates tend to reflect the seasonal feature of working in construction.

This is where we have the concerns of establishing too high a benefit or else the calculation for the ceiling, where you recognize overtime, bonuses and so on, establishes an artificially high benefit level for the construction worker. This is where a construction worker is quite often an awful lot further ahead to draw workers' compensation throughout the year and extend his claim as long as possible rather than go back to a seasonal occupation where he knows he is going to be laid off in the off season.

I refer you once again to the fact that over the past 10 years the cost figure--I am relating to again here now the cost to employers, the workers' compensation cost per employee to the employers--is more than double; it has risen over two and a half times the amount of inflation over the past nine years. To us, that is unacceptable.

The one-day waiting period: I think this is common practice pretty well throughout the construction sector. Most employers pay the day of accident just as a matter of course. If it is a collective agreement that governs the project, it is likely in the collective agreement that the man is entitled to that day and for this reason, we do not feel that it should be made part of a statute. We see no reason to put it in there and we really feel strongly that it should be left as is.

With regard to access of records at the Workers' Compensation Board we feel that fair is fair. We think an employer should have equal access to whatever records that pertain to the claim that the employee has.

When it comes to medical records or any kind of confidential information of that nature which could have a bearing on the worker's personal life, or whatever, we are quite willing to let the employer be defined as a health care professional delegated to receive and assess medical information, and advise management. We do feel that that assessment should be available to us. We really have no interest in knowing what the fine details are on the individual's claim or on his reports, but we do feel that that assessment should be available to us.

Once again I would refer you to Mr. Cronish's brief, as I



feel Mr. Cronish made an excellent presentation with regard to the accessibility of records.

Mr. Lupusella: He is too leftist.

Mr. Elgie: He is too leftist?

As I have stated, and I do not want to belabour the point, we feel the information should be available if one is realistically going to assess a claims situation. It does not happen all that often that you need it.

As I said, I worked in industry for a good number of years. I spent a lot of years attending appeals and hearings at the Workers' Compensation Board. I found the co-operation of the people at the board to be excellent. There were very few cases where I did not get the information I needed. However, there always is the odd case and I think there should be the ability to get that information when it is required.

With regard to the calculation of compensation benefits, once again I go back to my cost figures. I am not going to go through them again; you are aware of our feelings. To reinforce what I have said, we want the benefits to go to the truly entitled individuals. We would be glad to sit down and work with anybody within the board, with committees of your group, or along any avenue you would suggest. We would be pleased to work on an ongoing basis to try to achieve this particular end.

With regard to the financing of health and safety, we feel that in the construction sector we have an excellent safety association. The Construction Safety Association of Ontario has been our research, our counselling and our education arm for many years. We feel it is doing an excellent job for the construction industry. As the employers are footing the bill, we must insist, if you like, or very strongly recommend, that the Construction Safety Association continue to be the sole research and education body for the construction sector, and that any funds we do provide go directly to it and not be siphoned off into some other fund or provided to another agency at this point.

The Construction Safety Association does have the labour involvement. It has the health and safety committees; it pioneered that. We feel it has had excellent co-operation and we would like to see that continued.

With regard to page 11 of the brief, headed "Medical Aid--Health Care," we have commented on this. We are not entirely sure what we are commenting on. We see in the bill that the words "health care" have been substituted for "medical aid," but there is no definition of health care. We are concerned when we see that change being made without any definition. We would like to know what the definition of health care is, why it was changed and what the reasoning was behind that. We cannot comment other than that because we do not have any information.

Mr. Chairman: Very briefly, I can give you some idea. It was at the suggestion, and really the request, of the Ontario



Chiropractic Association. They are not medical but they are health-related.

10:40 a.m.

Mr. Elgie: But they are included in the Workers' Compensation Board now.

Mr. Chairman: I know, but they just felt more comfortable if they were included in the term "health" as opposed to "medical."

Hon. Mr. Ramsay: It also goes along with the legislation; but it is defined in the same manner as medical aid is defined now in the new act. Medical care is defined in the same way.

Mr. Elgie: I see.

Hon. Mr. Ramsay: The definition is the same for both.

Mr. Elgie: Okay. Fine.

Mr. Lupusella: Why do we not use "medical aid" and "health care" to make it clear?

Hon. Mr. Ramsay: We can look at that. I assure you there is no hidden meaning there.

Mr. Elgie: Fine. We wanted clarification on that point.

With respect to the industrial disease standards panel, we strongly endorse this panel. This is an area that is of growing concern. With the new attention being paid to designated substances--and they are finding more hazardous substances all the time that we have been living with for years and had no idea they were a problem--we strongly endorse the industrial disease standards panel.

We also strongly endorse the recommendation that employers be an integral part of that panel, because the employers have to be involved in that particular operation to be able to provide the technical information as to what is in the work place and the types of exposures that are there. With cancer, asbestosis, hearing losses and all the kinds of problems that are now coming to light, once again we look forward to working with the board and the ministry in trying to resolve any of the problems that arise there.

With regard to pension and other child benefits, we would ask that you reinstate the previous sections as they exist in the current bill. We believe any benefit awards should terminate upon the remarriage of the spouse. This is the common practice throughout the insurance industry and in any other benefit plans that I am aware of. I do not know of any other benefit plan where the benefits continue after remarriage, or whatever the definition of remarriage is, and we would recommend that be reinstated as it was in the old act.

With regard to pensions, COCA supports the employers' council position. I do not know that there is much I can add to it. We believe that from an administrative point of view, a lump sum payment for the smaller pensions would likely solve some of the administrative problems which exist at the board; that is going to be a cost-effective benefit.

I have some concerns with the pension system that is there now. Once a pension is established, it is there for life; there is no reassessment. From personal experience, I know of many cases where a pension has been awarded, the individual has gone back to the same employment, or indeed has gone through the progressive steps upwards, and the pension in effect became a bonus for a relatively minor disability which did not affect his work capacity in any way whatsoever.

There is the opposite side of the coin. I know there are cases where the pension awards are not adequate, and this is where I feel the benefits should go to the people who need them. There are many cases where the benefits that are paid are a bonus for having an accident; that is basically what they are. I would like to see something done to turn that around and put the benefits where they belong.

Spousal payment in the case of death: We respectfully submit that the death benefits under the Workers' Compensation Act should be made only in the case where the death results directly from the on-the-job injury.

That is a small item. It is not a frequent occurrence, but it is one we wanted to comment on because we think it is just one more item in the Workers' Compensation Act where we are swinging towards the social net aspect of workers' compensation. We feel workers' compensation is a work-related, work-oriented fund and it should be maintained as that.

With regard to the older workers' supplement--I have to be awfully carefully here, because I am approaching that stage myself--

Mr. Watson: Some of us are past it.

Mr. Elgie: --we have concern here once again. It has not been very well defined in the bill. What is an older worker? No age has been stipulated. In the construction sector, I have seen workers who could be considered older workers at age 40 because they are burnt out. They have been working in a heavy, labour-intensive type of occupation and they are considered to be burnt out at age 40. I have seen other fellows at age 75 who are in better shape than I am.

We need some definition there. We also need to know what kind of costs are going to be involved.

This is just one of the small areas that keeps adding to the total pyramid of the social aspect of the legislation that we have some concerns with. Once again, we have not seen any figures as to

what it is going to cost to put in the benefits, and we have some concerns in that area.

The medical tribunal: We strongly support the medical tribunal. We do not feel the medical tribunal is a replacement for sections 21 and 22 under the Workers' Compensation Act. We feel those sections must be reinstated.

We support the tribunal aspect, and once again we recommend that the list of medical assessors be supplied by some body such as the College of Physicians and Surgeons or the Ontario Medical Association and that it be based on their expertise and knowledge in the field. We do support that concept.

Full and accurate costing before any benefit changes are enacted: Once again, I draw you back to my cost figures. I indicated at the start, even at the horrendous costs that the construction sector is paying for their workers' compensation, that we are not paying our own way at the present time. The claims costs are exceeding the assessment dollars we are paying in. We just do not feel we can afford any higher benefits until we get a handle on the claims administration and tighten up the claims procedure so the benefits are going where they have to go.

For this reason, we cannot recommend any automatic increases. We feel that any increase in benefits, any legislated amendments, any increase in ceilings, must be very carefully studied, open to scrutiny and have industry input before they are passed. All we ask is that we have a chance to have our input and have a look at them before they go through, if they are going to go through.

10:50 a.m.

Another area of concern we have is the collection of assessments for the compensation board. We recognize, as Mr. Laughren mentioned at the start, that there are abuses to the system. Yes, there are abuses to the system. The employees are abusing the system and so are the employers.

We look forward to working with the administration of the Workers' Compensation Board in attempting to make sure that all employers are paying their just amount into the system. The system as it is now allows companies to cease operations and either wind down the company or move out of the province and leave a substantial liability behind for the rest of us employers who are in the province and are going to stay here. We end up picking up the tab for the rest of them.

We look forward to working with the board in establishing a fair and equitable assessment and collection system for our industry. We cannot speak for the other industries, but only for the construction sector. The construction sector does have special concerns. We look forward to working with the administration to try to resolve that one area.

As I indicated at the start, our brief bears a great resemblance to the Employers' Council on Workers' Compensation



brief, but we feel the construction sector has some specific areas where there are differences, and I hope I have addressed some of them this morning. You are aware of our concerns and I would be pleased to answer any questions I can.

Hon. Mr. Ramsay: I have one comment and one item of information. The comment I want to make and have on the record is that the Council of Ontario Contractors Associations has become, in my mind at least, one of the most co-operative associations from the private sector that we have dealt with.

We had a few problems at the beginning, but over the past year and a half to two years, they have made every effort to be totally co-operative with the ministry and the Workers' Compensation Board in reaching solutions to the serious problems out there. I believe they have taken a reasonable approach to those problems.

Their attitude has certainly been appreciated by me. I am sure it has been appreciated by the people at the WCB. That does not mean we are going to agree on everything. On the other hand, I think a better atmosphere has been created by this approach of COCA, and I want that to be on the record.

The other matter is about page 13 of your brief. You could well be aware of this, but you say, "Pension and other child benefits should cease on the remarriage of the spouse." The child benefits actually cease when the child reaches 16.

Mr. Elgie: The age of majority.

Hon. Mr. Ramsay: Yes, or leaves school.

Mr. Elgie: We are aware of that.

Mr. Sweeney: Let me start at the end, because you raised a question that is proving vexatious to us as well; that is, the branch plants that decide to pack up and go home, and leave all the costs behind. Do you have any suggestions as to how to deal with that? If they pack up and leave, we cannot really stop them at the border. At least, I do not know how. I would love to find a way to do it. I understand the reason you would put such a proposal in your brief, but do you have anything more concrete than that?

Mr. Elgie: One of the areas that could be considered is a deposit that perhaps is on deposit with the board to be refunded whenever the firm leaves, or if it leaves the country it forfeits its deposit. It would have to be a matter for some discussion.

Another thing we thought of was providing a bond to cover a certain amount of workers' compensation assessment. If you are coming from out of the province or perhaps setting up a new firm, you would post a bond with the Workers' Compensation Board that would be equivalent to one or two years' assessment, whatever it might be. If you pull out or we cannot collect the funds, then you forfeit the bond; there would be a bond to be called.



Those are some of the things. At this point they are merely ideas. We would have to sit down and discuss this with the revenue people at the board to see what they feel would be workable.

Mr. Sweeney: Would you be prepared to move to what in effect becomes a fully funded system, in which each year you as an employer would be prepared to pay into the fund the necessary amount of money to pay out the claims that occurred in that year?

Mr. Elgie: Yes, we would.

Mr. Sweeney: Have you any idea what kind of a difference that would make in your costs?

Mr. Elgie: Yes, it would be horrendous, but we feel that somewhere between the fully funded system and the system we have now is a workable system. We would like to move towards a fully funded system. We are on record with the board now and have had discussions with the revenue people there to work out arrangements to retire our unfunded liability in the construction sector. If you pay everything up front, that would eliminate the problem.

Mr. Sweeney: That would eliminate the problem right off the bat.

Mr. Elgie: The only thing it would not eliminate is the uncollectables, those who skip and do not pay. That is something else we have to work on.

Mr. Chairman: I wonder if we can call on Mr. Cain for some comments on this.

Hon. Mr. Ramsay: Just before that, I believe Mr. Sweeney raised this question of the board's position last week in my absence to Mr. Cain.

Mr. Sweeney: The reason I raised it again was that it is something we are grappling with. It was not raised in this context.

Hon. Mr. Ramsay: I am sorry. It was Mr. Haggerty who raised it. Mr. Cain did discuss the matter with the senior board officials. I would like to have him report on that. The position he is going to present is my position as well.

Mr. Cain: Under the subject we are discussing now, the board has reviewed the thought of dealing with employers who close their shops and, in some manner or another, capitalizing the value of their claims and collecting some assessment from them for the ongoing value of those claims. The board is in support of the idea of being able to do that.

Mr. Sweeney: But as of now you do not have a mechanism?

Mr. Cain: We do not have the legislation.

Hon. Mr. Ramsay: That is something we definitely want to look at. We welcome the participation of COCA in helping us reach some sort of resolution.

Mr. Sweeney: I think it has become fairly well established in this committee that you will get almost unanimous support if you can come up with a mechanism. I think everybody, including by far the majority of witnesses who have come before us, recognizes the unfairness of the present situation.

Mr. Lupusella: I have the mechanism in mind. I can give you my contribution.

Mr. Chairman: You can go to legislative counsel.

Mr. Lupusella: I can express my views in a minute.

Mr. Laughren: I was trying to get clear in my own mind the difference between an Ontario or Canadian company packing it in and a subsidiary of a foreign company packing it in. Is the end result not the same?

Mr. Elgie: It is the same. There is no difference.

Mr. Laughren: Why are you differentiating between how they would be treated? It is a strange element of xenophobia that I have not seen before in the employers' briefs.

Mr. Elgie: We just wanted to highlight that those are the two situations and that they both have to be addressed. The one cure would fix them both.

Mr. Lupusella: May I ask a question?

Mr. Chairman: If it is a supplementary, certainly.

Mr. Lupusella: Do you support the idea that companies should be requested by the board to have a cash advance assessment for a year, which would be rebated in the following year, as well as the normal, regular, course-of-the-year assessment that is given to the industry by the board?

In other words, the industries would be requested to pay two assessments in a year, one of which would be rebated the following year if the company was still in operation. The other one would cover the regular fiscal year for which the industry is requested to pay.

Do you support this idea of the interest being accumulated in a year? It would be like paying rent. The company would pay two months instead of one month and the other month would be there with the interest accumulated in case the company leaves. Do you support this idea?

Mr. Elgie: We would like to take a look at it. That is almost what I suggested earlier, a form of deposit to be returned whenever the company winds down. We have to see what kind of numbers we are talking about and what the terms are, but that is something we would like to talk about.

11 a.m.

Mr. Sweeney: You made a reference towards the end of your brief to requesting greater consultation between the board and the industry when new cost-benefit proposals were to be made. What is the present form of consultation and why is it not effective for this particular purpose?

Mr. Elgie: I must commend the ministry. We have gone a long way towards it because the current set of proposals we have before us were costed by the Wyatt Co., which was an independent costing, and we received that costing the same morning it was tabled in the Legislature. We are saying that maybe if we could have that a little bit beforehand and work a little more on the consultative process, it would be to everyone's advantage.

The other thing is, we would like a full costing. The current reports we had this time around did not include such things as administration, and there were several other items that were not included in the costing for Bill 101. We would like to see an ongoing development of what has already been started.

Mr. Sweeney: So it is an improvement rather than an initiation?

Mr. Elgie: An improvement, yes.

Mr. Sweeney: You spoke very strongly about health and safety money going only to the Construction Safety Association.

Mr. Elgie: That is right.

Mr. Sweeney: I gather you are referring to your own track record there, assuming you have been able in the past, at least in your judgement, to meet your needs and why not continue to do so?

Mr. Elgie: That is right.

Mr. Sweeney: On the other hand, it occurs to me that the construction industry is no different in many ways from the basic industrial sector where new and varied materials are constantly being introduced, new fastening materials, new kinds of adhesives and plastics. The list is probably endless and you know it far better than I do.

As such, is there not the possibility that there needs to be access to outside research facilities by the board, by your own industry, by the Ministry of Labour, by these various agencies that frequently need to know in advance what the potential hazards are?

Your association, at least to the best of my knowledge, and please correct me if I am wrong, is very effective in dealing with what is there now but not equally effective in dealing with what is coming up. We are finding that is a major problem in the manufacturing sector, and I suspect we are going to find it a problem also in the construction area as you move to these different kinds of construction materials.



I guess all I am reaching for is, do you not see some value in having access to other kinds of research, whether it be university research or independent research institutions or whatever?

Mr. Elgie: I do not believe I said we did not want to have that kind of access. I think the Construction Safety Association has acted as our research arm and it is quite capable of going out and interfacing with the other agencies that are out there on the information that is available. It has done so in the past very effectively.

I have no quarrel at all with the pooling of efforts by the various safety associations in their research endeavours. What I do feel quite strongly about is the lack of a need for a group of new safety associations springing up. I think we can build within the existing framework and develop the kind of research arms we need. I do not feel we need to have other new agencies being formed, which is going to create an additional cost burden and more overhead. That is my big concern.

Mr. Sweeney: Yet my reading of the legislation, and I cannot put my finger on it right at the moment, seems to suggest that rather than setting up new safety associations there would be access to whatever source of information and research is available anywhere. I do not think the intent is--

Mr. Elgie: No.

Mr. Sweeney: Am I wrong there? Can someone help me? I do not think the intent in the legislation is to set up new associations.

Mr. Elgie: I believe the legislation opens the door to it. Maybe the intent is not there, but I think the wording opens the door for it and this is what we are concerned about.

Mr. Sweeney: When we come to clause-by-clause discussion, I will look at that more carefully.

When you were referring to medical records, you used an expression, and I am not quite sure I understood you. You seemed to say, "We want to have equal access to the assessment," rather than the record itself. I thought I heard you say towards the end of that comment, "We are not really interested in all the details contained within the actual record, but we want equal access to the assessment of that record." Did I misunderstand you or do you mean something different?

Mr. Elgie: We are quite willing as employers to designate a health care professional to receive and assess medical information and advise management. That was what I was referring to as the assessment. We are willing to have a medical professional access the actual medical reports and medical records on the file and provide us with a summary. I do not necessarily want to see a copy of the doctor's or the specialist's report on the claim file itself, but I would like to be able to have my



practitioner access that information and give me a summary that I can read and understand in layman's terms. Then I can form an opinion and proceed on that information.

Mr. Sweeney: That is an assessment made by someone whom you asked to make the assessment; it is not an assessment that is available from the board, for example.

Mr. Elgie: That is right; an employer's representative.

Mr. Sweeney: I understand what you are saying there.

Right at the very beginning there was a reference made to--I will put it in this context--the whole question of return-to-work provisions. You indicated the seasonal and mobility nature of your work. We are again struggling with the whole question of finding ways to permit injured employees to get back to work with the employer where the injury took place. We feel that has a lot of potential benefits and yet the nature of your work seems to preclude that.

Mr. Elgie: Yes.

Mr. Sweeney: What can be done in your industry to make it more possible, more accessible to injured workers? I am quite aware of the problems, but what are some of the solutions potentially?

Mr. Elgie: I am afraid I do not have a ready solution for you at this time. I am aware of the problem when an individual is injured. A lot of construction projects may last only a couple of months and are completed and the firm moves on. It also could be an out-of-town project. By the time the individual has recovered, the project is finished.

I cannot give you a simple answer for that, but all I am saying is that it is not necessarily a workers' compensation problem at that point. The worker has received his compensation for the period of his disability, he is fully recovered and he is capable of returning to suitable employment. If there is no suitable employment available, all we are saying is that maybe another agency should then step into the problem.

Mr. Sweeney: The particular kinds of injured workers who concern us the most are those who have a partial but permanent injury.

Mr. Elgie: Yes.

Mr. Sweeney: This makes it impossible in most cases to return to the same kind of work that he or she did before.

Mr. Elgie: Right.

Mr. Sweeney: That is more likely to occur in a heavy industry such as construction, mining, forestry, heavy manufacturing and things like that.

Mr. Elgie: Yes.

Mr. Sweeney: Therefore, it does affect us as legislators in deciding the whole question of rehabilitation and future work opportunities for such people and the whole question of the kinds of skills they had prior to the accident, which were quite suitable to do the kinds of jobs they were doing but after the accident they are not. In many cases, because of age, education and language, they simply are not suitable for a whole range of different kinds of jobs.

11:10 a.m.

It is almost one of the pivotal points of us dealing with the question of workers' compensation, because basically there are two issues we have to deal with. One is to assist this worker financially over the period of time he needs financial assistance. The other is to get him back into meaningful employment so he can become self-supporting again, at least partially if not fully. We have to deal with two issues here; yet the one area where we have in the past and are going to continue to have big problems is one like yours. How do you get those people back into some kind of employment? Their inability to go back to the old job is surely due to their injury.

Mr. Elgie: We fully recognize that, and I have no simple answer for it. With respect to retraining, perhaps the individual is going to have to choose a different vocation at that point if he becomes unemployable in the construction sector because there just is no work in that field. Maybe it means he is going to have to go into a different field. The vocational rehabilitation branch at the board is doing its very best to deal with that now, and I realize that. It is not an easy problem. We cannot create positions in order to put these people back to work because there just is no call for it. There is no position we can create in the industry. Therefore, he is going to have to go to a manufacturing or other type of industry perhaps in order to get back to work.

There is machinery within the board now to recognize the differences in pay scales when he does go back to work. All we are saying is we want to get him back to work as quickly as we possibly can.

Mr. Sweeney: Obviously, it is in your best interests as well.

Mr. Elgie: It is. We agree.

Mr. Sweeney: The longer he is receiving compensation and the more compensation he is receiving from the board, the more your assessments are going to be.

Mr. Elgie: That is right.

Mr. Sweeney: So it is in your interest as well.

Mr. Elgie: That is right. The current duration of claims right now has jumped from seven to 10 weeks in the past two years.

It is a very obvious problem. We want to deal with it in the best way we can to everyone's advantage. We have no interest in sacrificing the worker--none whatsoever. We just want to see the care of that worker in the appropriate place. We want to see it being looked after by the appropriate body. I am saying that is not necessarily maybe compensation all the way.

Mr. Sweeney: In your mind, is there any future in the industry for different kinds of jobs coming on stream? For example, the people in manufacturing have drawn to our attention that as they become more automated there will be less need for heavy physical, manual labour. They are going to need a different kind of employee. Do you see that happening in the construction business as well, or are you just so totally different that there is no future there?

Mr. Elgie: It is coming. There are new construction techniques being invented every day. We are likely a little slower to change than general industry is. Also, it makes it more difficult for the construction sector because of the portable nature of our work. You can automate a factory where you can put in a robot welder or use robotics to much more advantage than you can on construction. You go in and set up a site today, your project is completed in a week, two months, six months or a year, and then you go on to another one. It becomes more difficult to automate that particular kind of situation just because of the portability you have to have.

There are new machines coming on stream all the time and they require more technical ability and maybe less manual requirement, but there is still a certain amount of physical labour you have to have. If you are going to pour a curb or lay a sidewalk, it has to be finished and we have to build the forms. Those are the things we have to address.

Mr. Laughren: I have a couple of questions. One of the themes that runs through the briefs we have been receiving--and there has been a couple of recurrent ones--is the cost of assessment to the employers and the other is the element of abuse. I have a couple of questions concerning that.

Has your organization ever tried to look at the costs of buying private disability insurance and comparing it to the cost of WCB assessment--the number of employees for a particular firm?

Mr. Elgie: It has been looked into. There are situations where, if you are operating out of province, you have to buy private insurance, or if you are working in the United States, you have to buy private insurance. It is very difficult to compare because you can never get an apples and apples situation. I know of no other jurisdiction that provides the benefits the Ontario Workers' Compensation Act does--not necessarily weekly indemnity benefits but the rehabilitation and hospital facilities and the pension plans. You cannot get a private plan that will provide the same benefits. If you had to stack private plans to give you the same benefits--and I am not aware of them being available--if you tried to replace them all, I agree the cost would likely be horrendous.



Mr. Laughren: It would probably be higher than the present assessment.

Mr. Elgie: To try to duplicate the benefits, it likely would be. I do not know. It is not available; so I cannot give you a cost.

Mr. Laughren: Has your organization thought about how frustrating it must be for other employers when they see a company such as Johns-Manville deciding it will take its chances on bankruptcy proceedings and civil suits rather than continue with compensation problems? I know all companies do not have the morals of a clam, such as Johns-Manville, but I am wondering how you see the WCB protecting themselves; they are not protecting you in the same way. How do you do that?

Mr. Elgie: I think that goes back to the final comment in our brief. We recognize that there are employee abuses and we recognize that there are employer abuses. We are equally disturbed by both of them. The employer abuses, the one to which you referred, is simply where a firm winds up operations, takes off and leaves the liabilities for the rest of us, who are still in business, to pick up. That disturbs us a great deal; it disturbs us equally as much as the individual workers whom we see abusing the system.

I think you have relatively the same percentage of abuses on both sides. It is a small percentage of workers who abuse the system. I know because I have worked with this system for 20 years, and it is a very small percentage. But it is like anything else; you spend 75 per cent of your time working on five per cent of your problems and the rest of them look after themselves.

With the employers' abuse, it is the same way. There is maybe five per cent of the employers who are creating problems out there, but that five per cent needs attention and it requires as much effort to look after that as it does the rest.

Mr. Laughren: Employers seem to be saying more frequently now than in the past that there are employee abuses, and yet we have difficulty getting from the employers exactly what they are talking about. I do not think you were saying that because the length of time a worker is off has gone from an average of seven weeks to 10 weeks, it is an abuse. I did not hear you saying that.

Mr. Elgie: I do not think it is an intentional abuse by the employee. A lot of blame for that falls on the medical profession. Currently, the individual worker has the choice of doctor to whom he can go. I have a family doctor; I have been going to him for 20 years. I know if I go in and see that family doctor, he will ask me how I am doing and I how I feel. I tell him how I feel. If I feel rotten, I tell him I feel rotten.

Mr. Laughren: He takes your word for it.

Mr. Elgie: And he takes my word for it. He gives me a prescription, or whatever he is going to do, and he says: "I think



you should have a couple of weeks in the sun. Why don't you take some holidays and go to Florida for a couple of weeks and then go back to work?" Do you book that in as sick leave or do you take holidays?

In the case of workers' compensation--and I know from experience because, as I have said, I have been out on the job sites--you get a worker who is injured and it is perhaps not really a serious injury; he has skinned his finger, he has got a bang some place and it is sore--

Mr. Laughren: Let us talk about backs because that is really what we are talking about.

Mr. Elgie: Okay. He has picked something up and he has a twinge in his back. You send him down from the project to the local hospital to go in and have the thing X-rayed to make sure there is no problem. He goes down to the emergency ward and sits there for an hour or so waiting for somebody to have a look at him. All the time he is sitting there, he is thinking about that sore back of his, and it is getting sorer all the time. Maybe it is not really, but just because there is nobody paying any attention to him, it is getting sorer. They come out and X-ray him, and the hospital doctor says: "There is nothing really wrong. Go see your own doctor tonight and you can likely go back to work tomorrow."

In he goes and sees his family doctor. The doctor says, "Well, Fred, how is it going and how is the back?" "Oh, God, I hurt my back." "Oh, yes, that really looks sore. That could be your problem. You had better take a couple of weeks off."

11:20 a.m.

I do not know how many cases I saw when I was in industry where the doctor in emergency would say the individual could go back to work. He would go to see his family doctor and he would be off for two weeks to a month. Just from my own relationship with my own family doctor, I know that is the case.

Mr. Laughren: It is almost an intuitive sense with you, is it, that these are abuses? You do not have a medical sense?

Mr. Elgie: No.

Mr. Laughren: You have an intuitive sense that a lot of workers are doing this?

Mr. Elgie: I would say yes. I am saying it is not necessarily the fault of the worker.

Mr. Laughren: No, I am not saying you were suggesting that. But you have this fairly strong sense, or your association does. I do not mean to personalize it.

Mr. Elgie: That was a personal comment really.

Mr. Laughren: But your association has this same collective intuitive sense that the combination of the worker and the doctor is abusing the system.

Mr. Elgie: Yes.

Mr. Laughren: I do not think you are suggesting that the system be designed for that five per cent of abuses.

Mr. Elgie: I think we should try to do what we can to correct that. I am not saying we should sacrifice the other 95 per cent in order to eliminate the five, but I do believe we have to work on trying to improve that ratio.

Mr. Laughren: That does not really explain why the length of time workers are staying off is increasing. It might explain why it is seven weeks to start with, but how does it explain going from seven to 10?

Mr. Elgie: I believe the supplements under clause 41(1)(b) have an awful lot to do with that.

Mr. Laughren: Is that what you would categorize generally as an abuse or would you categorize that as something else?

Mr. Elgie: I think it is the fault of the system itself. I do not think anybody is really abusing the system that much, but it is a fault of the current legislation.

Mr. Laughren: How would you get around that? Would you say those supplements should not be paid?

Mr. Elgie: Yes.

Mr. Laughren: Correct me if I am wrong, Mr. Cain, as executive assistant to the chairman of the board. Those supplements are paid when a worker is not totally disabled, but on the other hand cannot go back to his regular job. Am I right?

Mr. Cain: That is correct. They are partially disabled as identified by medical information being submitted to the board or by examination by a board doctor.

Mr. Laughren: So the Council of Ontario Contractors Associations would say that if a worker becomes partially better, not totally, he should not get that supplement?

Mr. Elgie: The criterion for the supplement is that the worker is actively working with the board's rehabilitation department, looking for work and going to see the doctor once in a while. If that is partially disabled, then yes, I guess he is partially disabled. I am saying that if a job became available tomorrow, there would be a miraculous recovery in that individual.

Mr. Laughren: I am a little confused now. If a job does become available, the board then says, "You either take that job or you no longer get the supplement."

Mr. Elgie: That is right.

Mr. Laughren: Am I reading that wrong, Doug, as the executive assistant to the chairman?

Mr. Cain: Just for clarification, I am director of the claims review branch.

Mr. Laughren: I seem to be confused on your titles.

Mr. Cain: The basis for paying a supplement is as I have just described it. If the injured worker or the board's vocational rehabilitation division finds work that is suitable for that worker, then that worker is expected to take it. Suitable means it is something that person is capable of doing within his physical ability based on the injury and other factors.

There are occasions when a job is located and it is somewhat questionable whether the worker can do it. The vocational rehabilitation division goes out and does an employment assessment. It is a very thorough assessment. It reviews everything from the worker being able to get to work to the kind of work the worker does and so forth. To the degree possible, we are trying to put a job with the worker's ability.

Mr. Laughren: If I may pursue this at length, Mr. Chairman, I think the committee has to deal with this question of abuses of the system which the employers keep raising. I am having great difficulty finding out what the solutions of the employers' associations are. In this case, I think that is the most direct answer we have had, and I appreciate your being so direct, that the supplement should be removed when the worker is partially recovered.

Mr. Elgie: I would say he is totally recovered.

Mr. Laughren: There is no supplement when he is totally recovered. I am confused. You really have me confused.

Mr. Elgie: I am saying that the worker for all intents and purposes is totally recovered physically. However, in the eyes of the board he is not, so it can continue to pay him a supplement.

Mr. Gillies: Always or sometimes?

Mr. Elgie: Not always; sometimes.

Mr. Laughren: In the eyes of the board it is the doctor's report, not the board's report, is it not, that determines whether the worker is completely recovered?

Mr. Cain: In many cases it is a report from an outside physician, probably a specialist. In some cases we bring the worker into our offices and have one of our own doctors at the board's offices examine the individual.

Mr. Elgie: It really boils down to the suitable and available work, and the descriptions we have. I think the whole



thing has really been extended beyond any realm of reality. The current duration of claims has gone from seven to 10 weeks, and I think that reflects the state of the economy. If work is not available, they keep them on workers' compensation longer because there are no jobs to go to. We are saying that if that were to cease, and that if when the worker is physically recovered so he can go back to work the benefits were to cease, then we could look after some of the widows and orphans and the truly injured workers, the ones we should be looking after under the system.

Mr. Laughren: Let me ask you this question. I will give you an example from my own area. I am sorry to be parochial, but I think it is a good example. I have used it with the rest of the committee, so bear with me for using it again.

I think a lot of miners have the same kinds of injuries that construction workers have, namely, back injuries.

Mr. Elgie: That is right.

Mr. Laughren: A few years ago, when the industry was booming and a worker got hurt, after that worker was partially recovered, the doctor would say to the worker: "You can go back to work, but you cannot go back to regular duty. You have to go back to modified or light duty work." The worker, clasping that light duty slip in his hand would go back to the employer, and the employer would say, "You go work in the dry," or, "You go work in a certain area of the mine where there is light duty work." The compensation board made up the difference if there was a wage difference, or sometimes the employer would just put him back to his regular rate.

Then the crunch came and there were massive layoffs, as I am sure you know, in the Sudbury area. The companies trimmed down their work force by about 50 per cent. Now that same worker, who gets hurt with the same kind of accident and has the same kind of modified back-to-work slip, returns to the employer, who says: "I am sorry. Even though your doctor says you can do some light duty work, we do not have any light duty work for you. We do not have those kinds of jobs any more, so we do not have a job for you."

What should happen to the worker in that case?

Mr. Elgie: Where was the man ahead of that individual and behind that individual on the seniority list when he went back with the light duty slip saying, "Please, Mr. Employer, give me some light duty"?

Mr. Laughren: I do not know what you mean, but let us say he was a 10-year--

Mr. Elgie: Was he still working or was he laid off?

Mr. Laughren: No.

Mr. Elgie: You were saying they have laid off half the work force. May I make a point?



Mr. Laughren: Yes.

Mr. Elgie: They have laid off half the work force. The individual has come back with a light duty slip saying he can go back and that they want some light duties for him. I am saying that if he would still be normally employed--

Mr. Laughren: Yes. That is what I am talking about.

Mr. Elgie: --on his seniority list, then I think they should make every effort to try to find him a job. If he comes back and the other people on the seniority list past him have been laid off and he has his brother workers who are now out drawing unemployment insurance--

Mr. Laughren: No. I am not talking about that.

Mr. Elgie: Okay. That is what I was talking about in my example. They are laid off and they are subject to unemployment insurance. Why should that individual have a preferred status over the other fellows?

Mr. Gillies: Should the partially injured worker in that case also be eligible for the same unemployment insurance benefits as the guys who were working right up to the day of the layoff?

Mr. Elgie: Yes.

Mr. Gillies: Because that is not always necessarily so.

Mr. Elgie: It depends on the length of the layoff. I think that is a very touchy issue. I agree it is a sensitive one, but it is one that has to be looked at.

11:30 a.m.

Mr. Laughren: I am still confused. What happens to that worker? Let us say he is a 20-year worker. He is 40 years old and has a back injury. He goes back. The layoffs did not touch him because they laid off only up to eight or nine years. He goes back to work. There is no light duty work available but he is only partially disabled. He then goes back home. The doctor says, "Don't you dare go back to full duty or you are really going to hurt your back." Does he go on welfare? Does he go on 50 per cent WCB benefits? Does he go on 50 per cent WCB plus the supplement to bring him up to total temporary? What happens to that worker?

Mr. Elgie: Currently, he goes on the supplement to bring him up to total benefits. I am saying that is not necessarily where he belongs. If he is never going to be employable in that industry again, maybe he has to take a look at another industry and change vocations. That is when you rehabilitate him and get him into another vocation, rather than leave him on the supplement forever and a day.

Mr. Laughren: Okay, but you would agree--do not let me put words in your mouth; I am sure you would not want me to do that--

Mr. Elgie: I am sure you would not try either.

Mr. Gillies: I would not be so sure about that.

Mr. Laughren: No, I will not.

Would you agree that worker should receive full WCB benefits until he either goes back to his regular duty or is retrained at another job or career or whatever?

Mr. Elgie: I would say he likely should, but you would have to assess each individual case on its own merit.

Mr. Laughren: They are anyway.

Mr. Elgie: I know. This is where I think the true management of claims has to be seen to be done. If you can convince me, as an employer, that management is taking place and the claims are being monitored and managed, I really have no quarrel.

Mr. Laughren: Fortunately, we have Mr. Cain here wearing one of his two hats--one of his two hats is director of the claims review branch--so we are lucky he is here and is hearing this.

Mr. Sweeney: Excuse me, before you go on, do you not see we are coming right back to the central issue we were talking about earlier? Your industry does not have a place for this person.

Mr. Elgie: We do not have a place for the guy. I agree. That is why I am saying he is going to have to be retrained and may have to change industries.

Mr. Sweeney: Again, picking up Floyd's comments, frequently the type of person who is injured, whether we are talking of mining or construction, is one for whom retraining and rehabilitation could be a very long process. A guy who is quite capable of being a good miner or a good construction worker and has long skills--he has become very expert at it--now is no longer able to do that job, but because of his background, which has nothing to do with the job, he simply cannot over a short period of time be prepared for another job, because of age, language, education or any number of things. That is the dilemma we find ourselves in with respect to the supplement. That is why some variation of the supplement becomes absolutely necessary.

The two industries, the one Floyd speaks of and the one you represent, are classic examples of how difficult it is to get that man or woman back in the work place again.

Mr. Elgie: I recognize that and I have no quarrel with that. I am just saying the supplement should not and must not be applied carte blanche. I go back to the area of claims management. It must be strengthened.

Mr. Sweeney: I can only tell you, as one MPP with a heavy constituency load of workers' compensation claims--and I suspect Floyd's is much heavier than mine--it is devilishly

difficulty to get that supplement. I will say this in front of Mr. Cain too. His people simply do not hand those things out carte blanche. You have to really make your case before you get a supplement.

Mr. Elgie: Why has the duration of claims increased from seven to 10 weeks over the last year then? The injuries are not any more severe now than they were a year ago.

Mr. Sweeney: I would have to say, if industries such as yours could find some way to get these people back working again, they would not need to be that long. Again, you have the person in that situation. What do you do with him?

Mr. Laughren: I think what is bothering us, as members, is that there are two ways of approaching the problem when you see that length of time increasing from seven to 10. One way is to say: "Somebody is abusing the system. We have to do something about it. We have to clamp down." The other way is to ask, "How the hell can we get these guys back to work sooner?" The employers, generally speaking, have taken the former course of saying: "Somebody is abusing the system. Let us clamp down." Yet when we pursue it with you in a more detailed way, I think the abuse argument tends to fall apart. I do not mean that in a mean way, but I think when you examine it more closely, it is not as simple as saying, "There are abuses and we have to clamp down." The workers have very little control over when they go back.

I have had all sorts of workers come to me who want to go back very much and are not allowed to by their doctor, or they are told to go back on light duty and the employer will not let them. They come to me and ask, "Is there not a law that says they have to take me back when the doctor says I can go and the employer says no?"

Mr. Bulmer: Do you want me to respond to that?

Mr. Laughren, I think we should supply the committee with some statistics on duration of claims that you will find very interesting. Mr. Elgie has indicated the time runs from seven to 10 weeks, but in our industry you will find the duration has been steadily increasing. In spite of the technological changes we have gone into and in spite of the fact that our accident rates are lower, we still see that increasing.

Mr. Laughren: We do not quarrel with the numbers at all.

Mr. Bulmer: Exactly. We have to ask ourselves the question, is it the employee or is it the system?

Mr. Sweeney: Or is it the employer?

Mr. Laughren: The employer is part of the system.

Mr. Bulmer: Do not forget the numbers we are talking about are real, not imagined. What is happening is that the duration of days is increasing steadily in spite of all the advances we have made towards a safer work place.



Mr. Laughren: Have you?

Mr. Bulmer: Yes, we have.

Mr. Sweeney: What advances have been made in providing alternative employment for those people? I think that is the critical thing.

Mr. Bulmer: I do not think there has been any material change in the things employers have been doing with respect to injured employees in our industry. There has not been a dramatic change, for example, in the case of an injured person coming back five years ago to a lighter duty job as opposed to his not doing so today. There has been no material change. We cannot quantify that, but by the same token, as Mr. Elgie has indicated, we know there has not been any concentrated effort to change that system.

In spite of that, we see the acceleration of the duration. Our accident rate is down in real terms; yet our costs are continuing to climb. If you look at the report published by the board in the last year, you will see the tremendous increase in benefits, the great portion of which is attributable to that duration of claims.

Mr. Sweeney: Excuse me for interrupting here, but if, as you say, your accident rate is down, is it not possible, and only you can tell us this, that you are getting a distillation process here? In other words, the people who are getting injured may be getting injured more seriously and, therefore, there is some rationale. That is one side you need to take a look at.

Mr. Bulmer: I do not agree with that, but we cannot give you the statistics at the moment.

Mr. Sweeney: Maybe you could check that for us.

Mr. Bulmer: Yes, we will.

Mr. Sweeney: There is another thing you could check for us. If I understood Mr. Elgie earlier, the work force has declined. If you have fewer workers per job, it would stand to reason that the opportunity for anyone to come back to work is going to be reduced. Opportunities to return to work are even smaller than they were before.

Mr. Bulmer: I will not disagree, except to say that the figures of seven to 10 weeks Mr. Elgie referred to this morning are for the last several years. That trend goes way back beyond two years ago when employment was high. We were getting an increase in the duration of claims even with high employment.

Mr. Sweeney: Any other information you could give us would certainly be helpful.

Mr. Bulmer: We have graphs we should have brought with us. This is where we see the whole system needing to be worked on. All we ask is that you give us the opportunity of working with you on the system.



Mr. Sweeney: Surely you appreciate that we, as the legislators responsible for assisting in drafting this bill, have to take into consideration the information we have as well.

Mr. Chairman: I am going to have to break in here, gentlemen, although I know we are all concerned with getting an answer.

Mr. Laughren: Can I have one more question, not on this subject?

Mr. Chairman: I am afraid I am going to have to say no. I have several other speakers who wish to ask questions and I do not think we are going to have time.

Mr. Laughren: It is a very short question.

11:40 a.m.

Mr. Chairman: I believe you. Ask it of me later. I feel we have to break in here.

Committee members, we have one other witness to hear and we do not want to shortchange that group. I have Mr. Riddell's name down and I have Mr. Lupusella's name down; so I am afraid we have to break off here.

I thank the delegation for appearing before us. I am sure you understand our concern about your problems. I am sure if any of the committee members have particular questions, they could do it by correspondence or direct phone calls to the delegation.

Mr. Laughren: As soon as we threaten, you move in.

Mr. Chairman: That is right. Thank you once again, gentlemen.

The second witness is the Provincial Federation of Ontario Firefighters. I will put Mr. Riddell's name down first and Mr. Lupusella's second this time.

Mr. Lupusella: Mr. Chairman, I was in the emergency department yesterday. I could have supported the contention portrayed by my colleague Mr. Laughren. You did not give me the opportunity to explain what the real world is all about. I spent two hours in the emergency department of Wellesley Hospital yesterday.

Mr. Laughren: Was it your thumb?

Mr. Lupusella: Not for my thumb.

Mr. Watson: Are you feeling better today?

Mr. Chairman: Gentlemen, would you like to introduce yourselves and away we go.

## PROVINCIAL FEDERATION OF ONTARIO FIREFIGHTERS

Mr. Smith: I believe Mr. Bolton was supposed to be here with me today, but he is not able to be here.

On my far right is Mr. Bob Weech, the first regional director of the Provincial Federation of Ontario Firefighters. This is Mr. Ken Thrower, a Burlington firefighter, who is a member of the workers' compensation committee for the provincial federation.

My name is Ross Smith. I have been an active firefighter with the city of Mississauga for the past 16 years and the secretary of the Mississauga Firefighters Association. I am also a member of the workers' compensation committee.

The briefs are being handed out. This was put together very quickly. We thank you for the chance to make an oral presentation to the committee. Has everyone got a copy of the brief now?

Mr. Chairman: Yes, we do.

In view of the time, we have three quarters of an hour or up to an hour, I suppose, if committee members are willing to stay beyond our normal cutoff time at 12:30. As you know, the committee members are interested in your brief; so if you can reserve as much time as possible for questions, it would be helpful.

Mr. Smith: Okay.

Mr. Lupusella: Can I ask just one short question? Is the presentation of your brief completely different from the presentation that was made before?

Mr. Smith: I did not hear the presentation.

Mr. Chairman: Do you mean the presentation of the association?

Mr. Lupusella: Of the association.

Mr. Chairman: Is it substantially different to the one from your association a year ago? I think that is Mr. Lupusella's question.

Mr. Lupusella: We had another group from the firefighters last year. Is this the same group or is it different?

Mr. Smith: I did not make the presentation so I do not know. If it was the Toronto firefighters' group, Mr. Bolton made the presentation.

Mr. Lupusella: Okay. I am sorry.

Mr. Smith: In assessing the act to amend the Workers' Compensation Act, Bill 101, the Provincial Federation of Ontario Firefighters was impressed with the quality and scope of the amendments and has found them to be in the main humanitarian and constructive both in nature and intent.

We are pleased to note the amendment to clause 36(1)(a), compensation in the case of death. Organizations representing firefighters have striven for years to have the amounts payable in lump sum benefits to survivors increased to realistic standards. We feel this is certainly a positive step in that direction.

We did have some difficulty with clause 36(1)(b) in that the term "periodic payments" was not more clearly defined.

The proposed amendments speak to schedules 3 and 4 in subclause 1(5)(n)(iv). A query to the ministry elicited the response that schedule 4 is in the process of being written. We would appreciate the opportunity to examine the schedule upon completion.

We have some concerns relevant to the repeal of sections 21 and 22 of the existing act. While it is true to say that not all employees are open and honest, it is equally true to state that the same would apply to employers.

In the case of a first responder service such as the fire departments in Ontario, there is a high injury risk associated with the nature of the work involved. As the data generated concerning compensable injury and the decision-making process relevant to the employee's return to active involvement in his or her job emanate from the same position, it is not too farfetched to assume that the physician involved would be the employee's family doctor.

We can only trust that any release of medical records conform to the standards and safeguards contained in subsections 77(4), (5) and (6). We have no overriding fear that this will create a problem; we merely believe it necessary to record our apprehensions.

One of our major concerns involves the payment of compensable pensions. The old age pension, the Canadian pension plan and others have built-in escalator factors which attempt to allay the erosion of disposable income through inflation. The select committee on pensions, plus a royal commission on the same subject, strongly urged that all pensions have some form of indexing or escalation device to accomplish the very purpose for which the pension is paid; to allow the pensioner, for whatever reason, to enjoy the fruits of this country without penalty or poverty.

To deny the injured worker this same benefit would seem to be at cross purposes to the philosophy of the royal commission and the select committee on pensions. We strongly urge the standing committee on resources development to use its good offices to attempt to persuade the minister to consider the concept of escalator clauses in compensable pensions.

The Provincial Federation of Ontario Firefighters, in presenting this submission, has done so with a degree of expectation based on the constructive amendments proposed for the Workers' Compensation Act. We would be less than honest if we did not express our disappointment in the failure of the ministry to



include amendments relative to firefighter heart and lung damage, amendments of a type found throughout North America and specifically in Manitoba.

More so than other occupations, firefighters on employment in any municipality must be in excellent health. They are a select group who undergo strenuous pre-employment screening and testing; only the most fit are hired.

During the course of their careers, firefighters are exposed to hazards which can occur intermittently in other occupations but which are regarded as constants in firefighting. These are:

Stress, mental and physical: the responsibilities for life support in crisis situations; discipline; underlying and constant fear of injury, disease and death; shift work.

Strenuous physical activity: training; firefighting; heavy equipment; burdensome protective equipment; lack of warmup time.

Temperature extremes: anyone living in this province understands that.

Other physical hazards: wet conditions; burns; noise; smoke.

Chemical hazards: polyvinyl chlorides, carbon monoxide and many other chemicals with which firefighters come in contact.

Mr. Laughren: That last one is the biggest.

Mr. Smith: It is a big one--and let me tell you, they are out there.

Mr. Sweeney: It is kind of all-inclusive. I do not think we can write that into legislation.

Mr. Smith: I promised the secretary-treasurer I would not bring up the train wreck in Mississauga and I am not going to.

Mr. Laughren: That is very neat. I am glad you did not bring up that horrendous train wreck in Mississauga.

Mr. Smith: I am glad you brought that up.

Mr. Chairman: It is on the record twice.

Mr. Laughren: And the threat that posed to firefighters.

Mr. Smith: The jury is still out on carcinogenic hazards, but there is a growing body of literature which tends to place firefighters in the high-risk category. However, there is no doubt whatsoever that firefighters have a higher incidence of heart and lung damage because of the very nature of their work. A considerable amount of documentations to that effect accompanies this submission.

The results of the aforementioned hazards generally affect the myocardium, which leads to an increased incidence of



myocardial infarction. This has an effect on vessels, leading to an increase of arteriosclerosis, can cause aggravation to pre-existing heart disease and can produce other stress effects, such as hypertension.

If I have to say that many more times, I would come under a pre-existing heart attack.

Specifically, myocardial disease is damage to the heart muscle cells. Carbon monoxide-induced hypoxia due to the formation of carboxyhaemoglobin, COHb, in the blood damages the respiratory apparatus of the cells and causes nonreversible tissue death. There are references at the back of this submission which indicate where this material is found.

It occurs in animal studies at levels of eight to 10 per cent carboxyhaemoglobin. Firefighters reach those levels in minutes. Firefighters have chronic slight elevations in COHb which often exceed the allowable industrial limits.

The myocardium can be damaged by other poisons which enter the blood via the lungs. Cyanides also lead to cell damage. Carbon dioxide stimulates respiration, increasing the uptake of other toxic substances.

11:50 a.m.

Physical stress results in an increased heart rate and thus an increased need for oxygen. High-temperature exposure also increases the heart rate. The increased oxygen needed often cannot be met due to the tying up of the oxygen-carrying capacity of the blood COHb and due to the possible arteriosclerosis of the vessels supplying the heart.

The lack of warmup time has been shown to lead to periods of oxygen deprivation of the myocardium, possibly caused by release of hormones which constrict vessels.

Arteriosclerotic heart disease (hardening of the arteries): Psychological stress--evidence clearly shows that this is one of the prime risk factors in the development of ASHD, or arteriosclerotic heart disease. Carbon monoxide exposure--some evidence indicates that this can damage arterial walls; one of the leading theories about the cause of ASHD is from the damage to arterial walls.

Aggravation of pre-existing heart disease: Pre-existing heart disease leaves the heart with no reserve capacity to deal with any or all of the above situations. There is much evidence for this; for example, increased effect of CO, accentuation of the heart rate effects, greater risk of ASHD and myocardial infarction.

Other cardiovascular effects: Evidence clearly shows that stress leads to increased evidence of hypertension, which is a risk factor for both ASHD and myocardial infarction. Stress leads to an elevation in the blood clotting factors. CO is believed to cause increased "stickiness" of blood platelets. Both of these will increase the risk of coronary thrombosis.

Heavy physical exertion increases the incidence of arrhythmia (irregular beating of the heart) and thus increases the risk of myocardial infarction.

Various mortality studies show that firefighters suffer more from cardiovascular diseases and atherosclerotic heart disease than all other occupations. For example:

(a) A firefighter mortality report from the International Association of Firefighters, Annual Death and Injury Surveys from 1975 through to 1978. Comparison of this to the US national average (from the US Public Health Service; comparison done in heart disease study of city of New York firefighters) showed, for age groups 45 to 64, more than double the national average for all occupations for both all cardiovascular diseases and atherosclerotic heart disease.

(b) A study of 30,203 firefighters in 22 large cities. It was found the average death due to heart disease was 7.24 over 1,000 for firefighters; the United States average for the 25 to 54 age group is 0.88 over 1,000. This is almost 10 times the incidence of death due to heart disease.

Medical/experimental studies show a correlation between heart disease and carbon monoxide exposure, physical and mental stress and firefighting in general. As well, studies of specific heart disease indicators show adverse effects from various firefighting hazards.

Heart injuries have been recognized as industrial diseases for firefighters in other jurisdictions in Canada and the United States--not only heart diseases, but also heart, lung and liver disease. Some of those jurisdictions are Manitoba, Alabama, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois and so on.

In addition, the following jurisdictions have presumptive legislation relative to lung disease. Ohio: "any pulmonary diseases....caused by the cumulative effect of the inhalation of smoke, toxic gases, chemical fumes and other toxic vapours." New Hampshire recognizes lung disease; New Jersey, tuberculosis of the respiratory system; and ad infinitum.

Also Manitoba: "Where a firefighter suffers injury to his lungs, brain or kidneys, unless the contrary is shown, the injury shall be presumed to have arisen out of and in the course of his employment as a firefighter resulting from the inhalation of smoke, gases and fumes or any of them."

"Where a firefighter suffers disability by reason of inhalation of carbon monoxide, unless the contrary is shown...."

"Where a firefighter is disabled by reason of injury to his lungs, brain or kidneys resulting from the inhalation of smoke, gases and fumes or any of them, or by reason of inhalation of carbon monoxide, the date of the beginning of the disability shall be deemed to be the date of the accident causing the disability."

Medical literature strongly links the occupational hazards and conditions of firefighting with heart disease. Therefore, the

Provincial Federation of Ontario Firefighters submits that it is not unreasonable for the minister to conclude that heart and lung diseases and heart attacks are an occupational hazard of firefighting and to that extent be recognized by inclusion in the Workers' Compensation Act.

Mr. Chairman: Thank you very much, Mr. Smith, for that presentation, and congratulations on pronouncing all those medical terms.

Mr. Smith: Most firefighters have grade 2 education. I am more educated than the others; I had grade 3.

Hon. Mr. Ramsay: The brief is rather illuminating for me. With some embarrassment, I must admit that I was aware of the risks you undertake on a regular basis, but I was not aware of some of the consequences of those risks.

You are correct when you state that the new act does not refer to this, but neither would the Manitoba act; it is a regulation to its act. Manitoba, as will Ontario, has regulations that follow the act.

I am not suggesting we will have a regulation immediately that would address that. I am suggesting this is something that the industrial disease standards panel which will be set up would be able to review at an early stage. Quite possibly, a regulation could be developed from that.

Mr. Smith: Is that the schedule 4? I believe that had something to do with industrial diseases.

Hon. Mr. Ramsay: I beg your pardon?

Mr. Smith: Schedule 4?

Interjections.

Mr. Lupusella: It is a cop-out.

Hon. Mr. Ramsay: It is not a cop-out, Mr. Lupusella.

Mr. Lupusella: It is.

Hon. Mr. Ramsay: Let me finish my remarks, please, and then you can say anything you wish; let me finish without interjections.

Mr. Laughren: We know a cop-out when we see it coming.

Hon. Mr. Ramsay: I made the point that I am hearing this for the first time this morning. Perhaps I should have before. I have admitted that. I am saying that we are going to look at it. I am also saying it is something that conceivably the industrial disease standards panel could look at when it is formed. In other words, it is something that concerns me and we are going to take a better look at it. I am suggesting that is one of the ways in which it can be addressed. That is all I am doing at this time.



Mr. Riddell: Perhaps I am not fully aware of the problem, but if a medical report indicated that the heart failure or lung disease of the firefighter was related to his work, is he or she not covered under workers' compensation?

Mr. Smith: We had a case in Mississauga where an active firefighter during the course of his duty attended six fires that day. On his way home from duty he had a heart attack in his car. He is not covered under workers' compensation. Yet you could probably relate it to the fact that he had a very stressful day.

Mr. Riddell: Even if the medical report indicated the heart failure was due to his job?

Mr. Smith: Yes; unless it happens while he is on duty. As soon as he gets in his car and drives off the parking lot he is on his own hook. There are cases documented throughout North America where that has happened. If it happens while he is on the job at a fire, he will be covered; but once he is off duty, he is not covered.

Mr. Laughren: Even that is debatable.

Mr. Smith: There have been cases where men have collapsed after fighting the fire.

Mr. Riddell: While still on the job.

Mr. Smith: That could possibly be so.

Mr. Sweeney: Back at the firehouse, for example.

Mr. Smith: He is still technically on duty; so he should be covered.

Mr. Riddell: He is not under the present act.

Mr. Smith: In the majority of cases, it depends on who makes out the workers' compensation report. If the person in management who makes it out checks off a box indicating that he has some doubt the injury occurred on the job, you are in an appeal process.

Mr. Riddell: If that is the case, I could not agree with your report more. I never would have suspected that firefighters would not be covered under workers' compensation.

Mr. Smith: If you are off duty and have a heart attack off the job, you are on your own hook. The problem is also that some of the stress factors cannot be related to by someone who has not done it. To fight a fire is quite a traumatic experience. You could be doing something quietly at the firehouse and 30 seconds later you are out on the street.

You have had no preliminary warmup time. You are going full out. You get back to the firehouse and try to relax, but you are still hyped up. Quite often heart attacks occur many hours after the initial shock to the heart. When that happens you could be at



home having your dinner. The fire could have been prior to that, and you could have a heart attack two, three or four hours later. It is very hard to document that it can be related back to your job.

What we are saying here is that firefighters, because of the nature of their work, should have some type of presumptive legislation to cover us when we are off the job. It can be because you are a firefighter and the hazards involved in your work, the chemicals you come in contact with; these can cause and lead to these particular diseases and we should be covered 24 hours.

12 noon

Mr. Riddell: I suppose the time factor is the limiting factor in this whole thing. If a firefighter had a heart attack seven days after he fought a fire, would that still be job-related or does it have to be a matter of hours after?

Mr. Smith: I would like to introduce the fellow to my left, Mr. Elliott Hastings, who is the 13th district vice-president of the International Association of Firefighters.

Mr. Hastings: I think what our brief is attempting to suggest is that there are two areas where we are concerned that firefighters are not covered under the current workers' compensation legislation. We think we have indicated fairly honestly in the first instance, with cancer, that the jury is still out to some extent. I am sure you folks have had lengthy debates as to many occupations and what the cancer-causing effects of those occupations are.

We suggest to you fairly strongly that many other jurisdictions have accepted the cumulative effect of the occupation with regard to heart and lung legislation. The indication there is that if you are a firefighter over a number of years, the number of exposures you have, whether indeed you are on the job when you have your heart attack or whether you are on your vacation in Florida, your heart attack could well be the result of the cumulative effect of your occupation. As a result, many of these jurisdictions have drafted and provide the type of protection we are seeking that could possibly be included in a regulation at a later date.

That is the thrust of our presentation this morning. We would seek to have that, whether it was on duty or seven minutes after you left duty or seven days or whatever, if you are an active firefighter and you incur these heart or lung diseases, workers' compensation would be available to you.

Hon. Mr. Ramsay: Have any studies been done? I have not looked at your appendices.

Mr. Hastings: Extensive studies have been done.

Hon. Mr. Ramsay: With respect to the incidence of heart attacks among firefighters compared to other professions?

Mr. Hastings: Yes, there have been.

Hon. Mr. Ramsay: Is it in here?

Mr. Smith: Yes. I believe there is a brief by Dr. Pat Orloff, listed as exhibit 2.

Hon. Mr. Ramsay: I will study that later.

Mr. Hastings: There are a number of studies included there. I think two letters that would be of interest and possibly should be on record are a letter from a doctor at the Toronto Fire Department and a letter from Dr. Hartwell, who is associated with the Vancouver firefighters. They are fairly short letters that are included in this submission, but I believe it would be important to have them on the record as well.

Mr. Smith: Could I read those into the record?

Mr. Chairman: Certainly, if the committee wishes.

Mr. Smith: One is a letter to Bill Laird, who is a trustee of the international. He is also the president of the Manitoba Professional Firefighters Association.

"Dear Sir:

"This letter is being written to state my opinion as to the relationship between the occupation of firefighting and the subsequent development of coronary artery disease, more commonly known as heart disease.

"Statistics from the International Association of Firefighters and the National Fire Protection Association show that firefighters have the highest rate of on-the-job death of any occupation: about 70 per 100,000 per year. About half of these are due to heart disease. Some of this heart disease occurs in men who do not have the usually accepted risk factors.

"What aspect of firefighting accounts for this? Some theorists suggest that the increased physiological tension, accelerated physical stress to maximum levels and exposure of the respiratory tract to toxic products of combustion may be the reasons.

"Scientifically acceptable proof of the causal relationship between firefighting and heart disease is lacking for many reasons--relatively recent recognition of the problem, multifactorial causation, numbers of years needed to do a proper longitudinal prospective study, insufficient interest and money in the scientific community to pursue this study--but a lack of such scientific proof does not negate the possibility of its existence.

"Moreover, because of the statistical argument, one must have a high index of suspicion that there is a causal relationship. The early days of asbestos problems provide an analogous situation.

"My experience with the Toronto Fire Department, the fire service generally, and my knowledge of literature leads me to

believe that there may well be a causative factor in the occupation of firefighting that causes an increased rate of development of heart disease. Certainly if coronary artery disease develops in firefighters who do not have the normally accepted risk factors, the onus must be on the compensation board to prove that the occupation of firefighting was not a contributing factor to the development of such disease."

That is a letter from Dr. J. T. Bates of the Toronto Fire Department.

Exhibit 4 is also a letter to Mr. Laird.

"Dear Mr. Laird:

"Re: Heart disease/firefighters.

"Mr. W. J. Copeland, vice-president of the 6th District, IAFF, has requested that I contact you regarding the above-mentioned subject.

"I might mention that over the past 12 years, Mr. Copeland and I have attended all six of the AIFP John P. Redmond memorial seminars held at various locations throughout the United States and dealing with occupational health and the hazards of the fire service. In these seminars, heart and lung damage sustained by firefighters was discussed in some considerable detail by eminent cardiologists and internists brought in from all parts of the States who had particular expertise in this field and who had carried out extensive investigations of these matters with particular reference to firefighters.

"The overwhelming medical consensus was that there is a very definite and marked increase in heart disease, particularly coronary artery involvement, in firefighters as opposed to any other professional group.

"Certainly this has been my experience in working with firefighters for over 20 years in my capacity as director of the city's occupational health service. As a matter of fact I became cognizant of this relatively shortly after I started working with city employees. What first brought it to my attention was the weekly sick leave list that is submitted to me by the fire and police departments. This is a list of all personnel who have been off work due to illness or injury in excess of 10 days.

"Prior to discussing this, however, I should point out that all fire and police personnel undergo rigorous testing procedures, including medical examinations, both prior to acceptance and thereafter at regular intervals according, basically, to their age groups. The point here is that these personnel, at least at the time of their acceptance, are in as near perfect physical condition as is possible to ascertain. Moreover, the two forces are approximately equal in number, just under 1,000 firefighters and just over 1,000 police officers.

"From perusal of these sick lists, it has become very apparent that the number one cause of premature death and



disability among firefighters is coronary artery disease, but this was not matched at all by their police counterparts where the number one cause of disability was musculo-skeletal disorders, particularly bad backs--heart disease being very far down the list. Incidentally, the number two cause of disabling among firefighters is also musculo-skeletal, and again predominantly bad backs.

"To put the matter in plain terms, if we have less than five coronaries a year in the fire department, then that is not a particularly bad year. Actually it is a shocking figure but what I mean is that it is not an unusual one. On the other hand, within the police department, coronaries, that is, myocardial infarctions, are quite rare and an experience of one or two in any given year is considered excessive.

"Now, the causes of these occurrences among firefighters have been extensively investigated and I would refer you to the brief submitted to the British Columbia Workers' Compensation Board directly relating to this matter. As a matter of fact, this brief resulted in increased WCB coverage of heart and lung diseases in firefighters, whereas their initial objective was to decrease such coverage. I strongly urge you to look over this brief and incorporate it in your submission. I am sure Mr. Copeland would supply you with a copy if you do not already have one.

"As far as I can recall without researching all the literature pertaining to this subject, the chief causes that have been positively identified are: carbon monoxide inhalation at the scene of any fire, maximum sudden, and sometimes prolonged, physical stress--the heart needs warmup time--and psychological stress.

12:10 p.m.

"Of course there are many other factors that can be involved. To my mind, another causative factor, and this applies to both heart and lung, has to be the exposure of all firefighters to noxious fumes and gases, most of which contain carbon monoxide, carbon dioxide, HCl, oxides of nitrogen, HCN, H<sub>2</sub>S, etc. However, of even more importance is the exposure to highly toxic gases, such as those found in chemical factory fires, burning plastics, etc., which cannot be practically measured at any given fire. We know that these gases damage the respiratory epithelium, but we cannot prove at this time to what extent this damages the myocardium. The matter also comes up here as to the repetitive nature of such exposures and their possible accumulative effects over the years.

"Just last week we had a chemical warehouse fire necessitating the admission of 16 firefighters to hospital. With one exception, all responded to treatment fairly quickly. My concern is what about the chronic or residual effects that might occur months or even years down the line.

"The fact of the matter is that we simply do not know. The only thing we really do know is that firefighters have a totally



inordinate incidence of heart disease which has to be work related. This point should never be lost sight of by any compensating body."

It is signed, "Yours truly, L. W. Hartwell."

Mr. Riddell: Just one last question, Mr. Chairman, maybe more to the minister than the delegation: Do firefighters stand alone in their possible exclusion from the Workers' Compensation Act? What about the farm labourer who has been working on a farm for some period of time? He has been swathing barley and breathing in the dust and the beards from the barley. Later on in life, he develops a lung disease of some kind. Is he any different from the firefighter or would he be compensated? What about the miner who develops a lung disease some time after he has been working down in the mine? I cannot see that the firefighters are treated any differently from some of these others I mentioned, are they?

Hon. Mr. Ramsay: There certainly has been progress made in the treatment of mining-related diseases. I cannot speak for the farm community. Has there been anything in that respect?

Mr. Cain: In reference to the particular situations you described, if they contract a disease which is covered under the Workers' Compensation Act, or that is recognized as being caused by the work they are doing, then compensation is payable. The question always arises, is the disease related to the work. That is where the discussions take place and the questions come up.

In terms of firefighters, their situation is no different. Really, what these gentlemen are suggesting in their brief is that there should be a presumption that if a firefighter has a heart attack, it should be automatically allowed by the compensation board because of the situations they describe. As it stands now, there is nothing in the Workers' Compensation Act that makes that presumption. When they have a heart attack and a claim is submitted to us, we look into it just as we would any other heart attack in any other industry.

Was that fireman, at the time or just before the time he sustained the heart attack, involved in something that was very physically active, etc.? Was he in gases and so forth? To the degree we would say that if he spent a period of 10 years as a fireman and a year or so later he sustained a heart attack, that heart attack is related to his history as a fireman, no, there is no presumption of that nature as it stands now.

Mr. Riddell: I can see that there would be a request for a presumption in many other types of jobs. Again, I go back to the farm. Take the farm labourer who has been expected to run that combine from the time the dew is off the grain up until it becomes too wet to combine, which is quite often at midnight. Here is a guy who is combining from 10 o'clock in the morning through until midnight, if the dust is still flying, and he is expected to do this day after day. Maybe down the line, because of this stress of not only running a great big machine that is prepared to gobble you at any time you get close to it, but also the long hours, let us say he develops a heart attack. Is he not entitled to the same

kind of presumptive legislation that the firefighters are asking for?

Mr. Cain: There is no presumption that farmers would be entitled to a claim for heart attack under the situation you describe. Again, it has to be specific and we have to look at the physical activity at the time or immediately before the heart attack occurred.

Mr. Riddell: What I am saying is that the firefighters do not stand alone in their concerns.

Mr. Cain: Other than that it has not really been brought to our attention by other industries, I would not say they stand alone. I really do not know, to be quite honest with you.

Mr. Lupusella: Mr. Chairman, I think it is fair to say, and the words are mild, that we are faced with jurisdictions that are more civilized than the provincial government. With great respect to the minister, he seems to think the industrial disease panel, which in theory has to take into consideration further developments of the needs that firefighters will be faced with regarding their job activities, exposure to hazardous chemicals and so on, will solve his problem. That is why we clearly stated that his position is a cop-out.

The firefighters appeared before us one year ago. That is why I raised at the very beginning the question of whether your organization was the same group that appeared before us last year. During the course of your presentation, I understand the concept of the trust and the research staff which has been incorporated within your brief is the same as was in the brief that was presented to us last year. They made a specific request that their concern should be contemplated by the new legislation that will eventually be enacted.

I understand that you have a tremendous concern and that you will read the content of their brief, but when you state that the industrial disease panel will solve the problems, I think your position, with the greatest respect, is wrong. The firefighters have been asking for such recognition as has been described in Manitoba Regulation 24/77.

Our position in Ontario in regard to the Workers' Compensation Board is completely different from what Manitoba is dealing with. Here we have the board setting up policies to interpret our Workers' Compensation Act. We do not have regulations. You can tell me if I am wrong when I say the board has a clear mandate to interpret the law and spell out the interpretation of the law, but we do not have any regulations. There is a difference between our act and the Manitoba regulations, which take into consideration what the firefighters are asking for.

I do not think the industrial disease panel will take into consideration what the group is asking for today. Unless we are going to change and the provincial government in the person of the Minister of Labour (Mr. Ramsay) starts taking into consideration

the need to draft regulations to interpret the act properly, I do not think the board should have such discretion to come out with a policy of interpreting the Workers' Compensation Act.

Before this group leaves, I would like to get some sort of commitment from you that firefighters will be considered under Bill 101. Under the present act and the new act, I think it is very hard, medically speaking, to recognize heart disease as a work-related injury. The firefighters have said in the course of their presentation that there is enough research material to relate the two things, that is, heart disease and exposure to chemical components as a result of the kind of work they perform.

Unless we come out in Bill 101 with some statement to give this extra status to firefighters, I think we are going to lie to the group if we say the industrial disease panel will come out with a policy or an interpretation of the law that will consider their needs. Are you ready to give us a commitment in regard to the comments that have been made on their concern that the matter will be legislated, so we do not leave the option to either the board or the industrial disease panel to come out with regulations?

12:20 p.m.

Hon. Mr. Ramsay: Mr. Lupusella, I said in my opening remarks today that I found the presentation very illuminating and that I was rather embarrassed I was not aware of the circumstances. I am obviously quite concerned and I am obviously going to look at it, but I think it would be very inappropriate for me to do more than express that concern and give a commitment to look into it. I am faced with this information for the first time and I am not going to make a commitment based on an initial association with the problem. In fairness, I do not think you would want me to. I do not think you would do so if you were in my position.

Mr. Lupusella: I would because I have done so last year.

Hon. Mr. Ramsay: I did not have the opportunity to do so and I do not recall this matter being included in the report of the standing committee on resources development.

Mr. Laughren: Does the board not tell you anything? Does it not report to you?

Mr. Lupusella: It was not part of our mandate.

Mr. Chairman: I do not think we can go any further than that. The minister has made a commitment to look into it.

Mr. Lupusella: That is fair enough, even though I disagree. That is why we felt nervous when we stated that it was a cop-out on the minister's side. We understand there is a problem and it will be considered.

We have the statement that the concern exists and that at some time this concern will be solved in the form of legislation



or regulations. I hope the regulations issue will come out as a result of Bill 101. I do not like the approach we are going to use, that the corporate board has to set policy.

I think that The Council of Ontario Contractors Associations which appeared before us is not pleased over the issue that certain things are not clearly spelled out within the act. It means that if we are seriously going to undertake the task of having a complete act, and if the Minister of Labour is drafting regulations to interpret the act appropriately, I do not think there is a need to have a corporate board to interpret policies contained in the act.

The COCA group was dissatisfied because it does not know what the board will decide. They do not know when the board is going to reconvene and what kind of policies will come out. They want greater control of the corporate board. If they disagree with the policies it is going to set up by having more control, that means they can fight back against the policies. I do not like that type of approach when we are dealing with the issue of benefits on behalf of injured workers.

Mr. Chairman: Mr. Lupusella, would it not be more appropriate to save this discussion for our clause-by-clause debate?

Mr. Lupusella: Mr. Chairman, you did not give me the opportunity to raise the question with the COCA group, so it is not my fault.

Mr. Chairman: I would like you to ask questions of the delegation to help us all understand.

Mr. Lupusella: I have a simple question.

You state--and I agree with you--that within the framework of the present act heart diseases are considered in the content of the claim. You also state that you had to appear before the appeal system to make the point that heart disease was work-related. What kind of success rate do you have in presenting this type of appeal before the board?

Mr. Smith: I have not been on the committee long enough to make an appeal, but I know that in our case we were not successful even in getting to the appeal. The brother is back to work, but he had to use up almost all his sick leave before he was able to get back on the job. He has recovered.

I am not aware of any cases. Are you, Mr. Weech?

Mr. Weech: We had three or four cases.

Mr. Chairman: Could you speak up?

Mr. Weech: In the Etobicoke fire department--you probably know where that place is--firefighters have had three or four heart attacks that were presented to the board and none was accepted.



Mr. Lupusella: I understand why.

Mr. Laughren: Etobicoke is near Mississauga where that horrendous train wreck occurred.

Mr. Lupusella: I do not have any other questions. I think their answers support the content of their brief. I think there is a need to draft regulations or to include their demands in Bill 101 to understand the reality with which firefighters are faced.

Mr. Smith: Mr. Chairman, Mr. Hastings would like to make a comment on Mr. Riddell's statement.

Mr. Hastings: If I may, please, with due respect to Mr. Riddell's observations about farm workers, I had the opportunity of being on my cousin's farm last week and worked there all week long.

Certainly, farmers in the course of their working lives are exposed to many things that are injurious to their health, but I think there are some distinctions. In our brief we have tried to suggest to you that we work in an uncontrolled environment most of the time. When we report to a fire call, people are normally leaving the scene while we are entering it. What tends to be happening to us during the course of the fire is that we are exposed to all of those toxic gases that are found in any community. It does not matter whether it is the hydrogen cyanide that comes off a wool rug burning in your home, or the polyvinyl chlorides from the telephone burning in your living room. Our suggestion is that a farmer may not come in contact with as wide a range of toxic gases as a firefighter might in his everyday work.

Interestingly enough, a number of lab studies have been done. They have taken a cross-section of firefighters in a community, put them in a controlled situation in a laboratory and put them through maximal stress tests. Firefighters with normal heart rates of possibly 50 or 60 beats per minute have been put through maximal testing and had their heart rates up to possibly 160 or 165 beats per minute. In firefighting situations, those same firefighters often exceed that by 15 to 25 heartbeats per minute.

They believe the reason is that not only are they physically involved in the fire but there is also that additional adrenalin rush as a result of the heat, the toxic gases, the searching for people within a building. Additional adrenalin is involved there, so the firefighter's cardiovascular system has an additional load to bear that could not be duplicated even in a controlled situation.

I also touched on the psychological stress here, but we are trying to point out that the combination of those things at every fire call has the cumulative effect that we mention in seeking the presumptive legislation. It is not simply the inhalation of toxic gases; it is not simply the psychological stress nor the work load.

To coin a phrase, in the fire service we often jokingly say that some firefighters, our counterparts, are afraid of heat, height and hard work. Those are the things that are constantly encountered at every fire: heat, height and hard work. Those are the things that cause the adverse effects.

Mr. Laughren: Can I have a supplementary on that?

Mr. Chairman: Yes, very quickly.

Mr. Laughren: My friend Mr. Rachlis, who is the fireman in our research department, pointed out exhibit 5 in the presentation, which talks about the heartbeat escalation, which is really incredible. That very short article is worth reading. I do not propose to read it here now, but it is an excellent story of what happens to heart rates of firemen.

Mr. Hastings: I think the article outlines the point I made, that you cannot duplicate in a laboratory situation what happens to your heart in a fire situation. If anyone doubts that, we would be pleased to have them at the Mississauga training tower for a day and put them through the ropes.

Mr. Laughren: Mississauga would be a good place, too.

Mr. Hastings: That is where we had the train derailment.

Mr. Chairman: Could we move on quickly? We have more questions here.

Mr. Havrot: Mr. Chairman, there is another concern I have that I think has been overlooked and should be considered. That is the role of the volunteer firemen.

In Ontario there are something like 700 fire departments, volunteer and full-time. Statistics, if my memory serves me correctly, run in the range of about 597 mostly volunteer full-time brigades and 100 full-time brigades with no volunteers at all. I can cite situations in my community where we have 40 volunteers and 14 full-time firefighters.

We had a \$1,250,000 fire two weeks ago that involved one full-time firefighter and the rest were from the volunteer brigade. These people are subjected to the same conditions as a full-time fireman when they are fighting a fire. This is an area of concern that I have. Across the province we have a very large percentage of volunteer firemen fighting fires. I wonder what protection would be afforded to these men who are also subjected to the same situations as you gentlemen.

Mr. Smith: I cannot answer for volunteer firefighters. Some departments that are members of our association are composite departments that have some volunteers, but they are not members of our association, so I cannot speak for them.

I would think that any firefighter in the performance of his duty should be covered under the Workers' Compensation Act and have presumptive part coverage, but I cannot speak for the volunteers.

Mr. Havrot: Yes. We are actually opening up a really big can of worms, because we are not only relating to perhaps most of you gentlemen, who are full-time firefighters and whose brigades are strictly full-time with no volunteers, but in the smaller communities across the province we rely very heavily on the volunteer firefighters.

Mr. Smith: There is one way around that.

Mr. Havrot: In the communities in my riding there are only two full-time fire brigades and the rest of them are all volunteers, for example.

Mr. Smith: I think with the enacting of the fire codes now, where we have to enforce the fire codes, it is time the provincial government looked at full-time firefighters for all the communities in Ontario. That is my point.

Mr. Chairman: That is hardly a compensation matter.

Mr. Laughren: Indirectly it is.

Mr. Chairman: Very quickly, Mr. Sweeney.

Mr. Sweeney: My question was very similar to Mr. Havrot's, Mr. Chairman, about the volunteer fire departments. I gather from your answer that you have no data which would indicate that the pressures they face are significantly different. You seemed to indicate that.

Mr. Smith: I would think they would have the added pressure that if they did have a heart attack while fighting a fire, then they cannot go back to their regular place of employment, which is a double shot.

In a lot of cases, the volunteer firefighter is a businessman in the community or works for a company in the community. If he was to have a heart attack while fighting the fire--well, if he fought a fire and went back home to his dinner and had a heart attack, he cannot go back to his regular place of employment, which may be the grocery store on the corner or maybe working for a company in the community.

Perhaps consideration should be given to that point. Where does that person go after he has been at a fire, goes home, collapses and cannot return to his or her regular place of employment, because he is a volunteer firefighter?

Mr. Sweeney: May I redirect just briefly to Mr. Cain, Mr. Chairman? As near as I know, the volunteer firefighter is covered by compensation while he is in active pursuit of that activity.

Mr. Cain: That is correct.

Mr. Sweeney: What is the relationship between that and what has been suggested here?



All of Wilmot township in my riding is serviced by volunteer firefighters, and they leave whatever job they are doing. If they go back to that job and something happens fairly soon afterwards, are they in the same situation of having to prove the link between what they just did and what they are now doing? What is the experience?

Mr. Cain: We are referring to heart attacks now.

Mr. Sweeney: Well, whatever it happens to be. It could be a heart attack.

Mr. Cain: Usually that is the disability we are thinking of and the link between a heart attack and the work is exactly the same for a volunteer firefighter as it is for a regular firefighter, as it is for anyone in any other industry covered under the Workers' Compensation Act.

We try to identify that some physical activity, at the time of the heart attack or immediately before the heart attack, caused it. If that is established under the current rules, then entitlement is extended.

Mr. Sweeney: But what you are saying is is that there is no difference in terms of presumption between the volunteer and a full-time firefighter.

Mr. Cain: There is no presumption that a heart attack is--

Mr. Sweeney: It really does not exist, okay.

Mr. Chairman: Before thanking the delegation, I would just like to ask, for clarification--you are representing the Provincial Federation of Ontario Firefighters. Thursday we have the Ontario Professional Fire Fighters Association appearing before us. Can you just help us distinguish between the two groups?

Mr. Smith: To keep the politics out of our--

Mr. Chairman: Okay. It is strictly political, is it?

Mr. Smith: They are professional firefighters. We represent approximately half the firefighters in Ontario and they represent the other half, who are not members of the International Association of Fire Fighters.

Mr. Sweeney: Strictly jurisdictional.

Mr. Smith: It is kind of an in-house argument. We used all to be together at one time, but now we are--

Mr. Sweeney: I am sure they will identify themselves.

Mr. Smith: Yes, I am sure they will. Thank you very much.

Mr. Chairman: Thank you for appearing before us.

The committee recessed at 12:35 p.m.





R-41

CA24N  
XC13  
-S78

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, JULY 31, 1984

Afternoon sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

### Substitution:

Hennessy, M. (Fort William PC) for Mr. Lane

### Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

### From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

### Witnesses:

#### From the Ontario Public Service Employees' Union:

McCombie, N., Member  
O'Flynn, S., President

#### From the Ontario Mining Association:

Aitken, W. R. O., President; Senior Vice-President, Inco Ltd.  
Horncastle, R., Secretary-Treasurer  
Hughes, J., Executive Director

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, July 31, 1984

The committee resumed at 2:08 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming consideration of Bill 101, An Act to amend the Workers' Compensation Act.

The Vice-Chairman: I call the committee to order. We are here this afternoon to entertain presentations to the standing committee on resources development considering Bill 101. I recognize a quorum.

At this time, our first witness will be the Ontario Public Service Employees Union and I ask them to come forward. Gentlemen, we have two presentations this afternoon, one by yourselves and one by the Ontario Mining Association. In the interest of fairness, possibly we should try to draw some time limits or guidelines as to time limits. Would that be in order with you gentlemen?

Mr. O'Flynn: It is a big delegation, but a short brief.

The Vice-Chairman: Thank you.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr. O'Flynn: Mr. Chairman, I thank you for the opportunity of being here today. We will read through the brief. It is not long.

The Vice-Chairman: Could we have your people introduced, please, Mr. O'Flynn?

Mr. O'Flynn: On my left is Sean Usher, on my right is Chris Schenk and on my immediate right is Nick McCombie.

The following brief is presented by the Ontario Public Service Employees Union. It is primarily, though not exclusively, concerned with the legislative proposals in the government's long-awaited amendments to the Workers' Compensation Act contained in Bill 101.

The Ontario Public Service Employees Union represents some 76,000 employees in this province. A vast majority of these work in the public service of Ontario in a broad range of occupations, such as correctional officers, nurses, social workers, clerks, inspectors, foresters, mechanics, cleaners, telephone operators, truck drivers, secretaries and scientists. The remaining members work in community colleges, hospitals, schools, children's aid societies, homes for the handicapped and many other government-funded agencies.



As our members perform a very wide range of different tasks in their employment, we are aware of different ways in which a worker can be injured on the job. We are aware of the common accidents as well as the more seldom recognized industrial diseases and disablements arising from work-related pressures. We are most concerned about the present situation of injured workers in Ontario and welcome this opportunity to present our views.

We last submitted our concerns to the standing committee on resources development regarding workers' compensation in April 1983. Our commentary was primarily addressed to the white paper on the Workers' Compensation Act which was tabled by the then Minister of Labour, Robert Elgie, in the spring of 1981. Today, the injustice faced by injured workers in Ontario continues. Bill 101 does not qualitatively improve this unwarranted situation. None the less, some of the most negative features of the aforementioned white paper have been dropped and Bill 101 does encompass positive proposals.

**Benefit of doubt:** A benefit of doubt clause has been added to the act in subsection 3(5).

**Our response:** We agree with the principle of a statutory benefit of doubt provision but advocate the recommendation of the Dupré Royal Commission on Health and Safety Arising from the Use of Asbestos in Ontario, pages 766 and 767, that wording similar to the federal Pension Act be used. We have a copy of that. The wording is:

"The commission, an entitlement board and the pension review board shall, in determining the entitlement of an applicant to an award and in assessing the extent of the disability of a member of the forces to or in respect of whom entitlement to a pension has been established

"(a) draw from all the circumstances of the case and all the evidence presented to it every reasonable inference in favour of that applicant or member, and

"(b) accept as proof of any fact that the applicant or member is required to prove, any creditable evidence submitted by him that is not contradicted and where, in weighing any evidence submitted to it, any doubt exists as to whether the applicant or member has established his case, the commission, an entitlement board or pension review board, as the case may be, shall resolve such doubt in favour of the applicant."

**Access to the courts:** The exemption from civil liability applying to employers and workers is extended to executive officers in sections 5 to 7.

**Our response:** In our earlier brief to the standing committee, we argued that the privative clause in the Workers' Compensation Act should be removed so the Workers' Compensation Board would be subject to a judicial authority. Not only has the privative clause remained, but immunity has been extended to those who, knowingly or negligently, by virtue of their control of the production process, cause occupational injury or disease.

The Ontario Public Service Employees Union supports the proposition that workers' compensation must remain a basically no-fault system but strongly believes that such no-fault boundaries should not be limitless. The history of asbestos litigation in the United States shows the degree to which corporate officials would go to suppress information which showed the murderous consequences of asbestos production and use.

In Ontario, while the WCB has a legal right to pursue third-party and products liability actions, and a wealth of data concerning unsafe and unhealthy work places, it has never taken a proactive role in using legal means, by itself or in conjunction with the Ministry of Labour, to make examples of unsafe or unhealthy work places or processes. If the WCB will not fulfil that role, then workers under certain conditions, such as proven violations of the Occupational Health and Safety Act, must be allowed to do so.

**Survivors' benefits:** A new proposal for compensating the survivors of workers killed on the job is laid out in section 36.

**Our response:** In the opinion of OPSEU, the objective should be benefits for all survivors, with or without children, calculated on 100 per cent of the earnings of the deceased worker. We also reject the proposal that Canada pension plan survivors' benefits should be integrated into this amount.

Where Bill 101 represents a cutback over the present legislation, it is primarily for three reasons. First, the amount of pain and suffering has been set at the arbitrary and low figure of \$40,000. Second, the monthly benefit is set at 40 per cent of net at age 40 and reduced in stages to 20 per cent of net at age 20. It would seem to be a simple improvement to increase the set amount to 50 per cent at age 40. Third, Bill 101 effects a cutback for low- and medium-income workers as opposed to high-wage workers due to the integration of Canada pension plan survivor benefits.

Where Bill 101 will result in a significant improvement is the repeal of section 37, which concerns the termination of spousal benefits upon remarriage, section 49, which terminates spousal benefits to a "common prostitute," and section 36, where it extends benefits to children to age 19 from the present age 16.

One of the worst omissions of Bill 101 is that it intends to leave existing survivors under the present legislation, proposing to improve survivor benefits only for future claims. As of December 1983, there were more than 2,700 children and about 5,300 spouses caught up in this unjust system. This is a human tragedy of significant proportions. Change is long overdue. Legislative action should be immediately taken to allow existing survivors to opt into the new system where it represents an improvement for them.

**Administration and appeals:** Management of the WCB will be by two full-time government appointed members plus part-time, "outside" directors representing employers, workers, professionals and the public. Final appeals will be heard by a tripartite appeal tribunal (sections 56, 86(b) and others).

Our response: The Ontario Public Service Employees Union believes that reorganization of the board is long overdue. Any compensation system requires both strong legislation and sympathetic administration and interpretation. Clearly, the current administration of workers' compensation in Ontario has suffered from an inbred resistance to change; in particular, in areas such as occupational disease compensation.

The provisions of Bill 101 which restructure administration and appeals are presented as an opening up of the WCB system to external input; to input from workers, for example. In our view, this opening up requires a far more substantial process than that outlined in Bill 101.

Allowing one board member, "representative of workers," on a part-time basis, to join representatives of employers, professional persons and the public, along with two full-time government appointed members, will provide only token labour input. We believe that workers, through the Ontario Federation of Labour, and injured workers, through the Association of Injured Workers' Groups, should elect their representatives to a board of directors. All other interest groups combined would provide, at most, an equal number of representatives. These representatives would then jointly select a chairperson.

In addition, at least one worker representative should serve on a full-time basis to have a daily input into the board's operations and learn first-hand, rather than through the executive directors, the workings of the WCB.

The appeals tribunal should be similarly structured. We also agree with the concerns expressed by others that there is no need for the chairperson of the tribunal to sit on the corporate board, with or without a vote. If the tribunal is to be a truly independent body, then its chairperson must not be perceived to be in such a potential conflict of interest position. The suggested rationale for this--increased communication between the tribunal and the board--can be achieved in far more open and effective ways: by publication of tribunal decisions, publication of board minutes and corporate board public hearings on policy issues. This would increase communication not only between the corporate board and the tribunal but also with workers and members of the public.

Finally, we agree with the submissions made by both injured workers and employers that the appeals tribunal's decisions not be open to reconsideration by the board. Either the tribunal is the final authority or it is not.

Workers' advisers: An office of the worker adviser shall be established by the Minister of Labour (section 86q).

Our response: The Ontario Public Service Employees Union represents workers in some community legal clinics throughout Ontario who currently act as injured worker advocates. These clinic workers, by virtue of their independence from the WCB, Ministry of Labour, and their primary funding source, the Ministry of the Attorney General, have already established a real independence and, just as important, a perception of independence



by injured workers that should be strengthened and complemented rather than replaced. Just as OPSEU as a union would not accept the establishment of an office of "union adviser" by the Ministry of Labour, we see no need for an office of worker adviser established by the ministry.

That the bill contemplates ultimate funding of these advisers by the WCB is a principle we would concur with. How these funds should be spent and what role the office should take are things that should be determined by the labour movement and other injured workers' representatives as proposed on page 33 of the Association of Injured Workers' Groups brief.

2:20 p.m.

Medical matters: The file access clause provides some protection for confidentiality (section 28). A roster of independent practitioners is established to assist the appeals tribunal (section 86h), and an industrial disease standards panel is established to recommend occupational disease guidelines (section 86).

Our response: We welcome the increased protection of confidentiality intended under subsection 77(5) of Bill 101. Properly enforced, this could mean a significant improvement over current board policy, which seems to allow completely open access to employers.

A second medical concern of note is the system proposed for resolving medical disputes at the level of the appeals tribunal. This is an improvement. Its significance should be enhanced by the views of representatives considered when naming members of the list of practitioners (subsection 86h(1)).

As to the limitations placed on practitioners as specified in subsection 86h(3), we are distressed that the most obvious exclusion--that of WCB doctors--is not included. The appeals tribunal should contain provisions for vested veto power to be given to workers over the medical practitioners selected. While such a veto would undoubtedly be rarely exercised, in our opinion, it should be included in the act.

The proposed industrial disease standards panel, under section 86p, also needs the inclusion of either representation or consultation with workers. Further, subsection 86(14) should be amended to oblige the board not only to report its decisions but also to explain them.

No reprisals against injured workers: Bill 101 amends the Human Rights Code to specifically include injured workers under the definition "because of handicap" (section 39).

Our response: It is our view that if it is acknowledged that injured workers are subject to employment discrimination, this should be addressed in the Workers' Compensation Act itself. Most labour statutes have entrenched "no reprisals" clauses, with specific penalties and remedies; for example, section 24 of the Occupational Health and Safety Act.



Second, if there is serious concern about the employment rights of injured workers, Bill 101 is the vehicle to also deal with return-to-work provisions. In our earlier submission we stated, "In principle, we support the proposition that injured workers should have an enforceable option to return to employment with the pre-accident employer if suitable work is available." That principle is, at best, feebly recognized by the bill via the Human Rights Code. We fail to see why a worker should be required to petition yet another agency when she or he is discriminated against in applying under the Workers' Compensation Act.

Work-related stress: No recommendations are to be found there.

Our response: The seriousness of work-related stress is increasingly recognized as a major problem in contemporary society. The membership of the Ontario Public Service Employees Union is concerned with this phenomenon, particularly those who work in institutional settings such as nursing homes, prisons, hospitals, ambulance services, etc.

Work in such stressful environments places tremendous pressure on them as individuals. This pressure has certainly not been alleviated by government cutbacks imposed over the years, nor has it been addressed in Bill 101.

Given the seriousness of the problem, we have included it in our submission. Work-related stress has given rise to many health problems for individuals. Such problems include heart disease, ulcers, digestion problems, alcoholism, nausea and allergies as well as psychological disability such as nervous breakdown.

We are concerned that our members, and workers generally, do not receive adequate assistance and compensation from the Workers' Compensation Board today and that Bill 101 offers no change to this serious situation.

We believe this is due in part to a false impression that the work place is not a factor in the development of these problems. They are either viewed as isolated individual problems or as broad social problems of society at large. The work place, standing between these opposites, is wrongly omitted from blame.

In the few cases where the Workers' Compensation Board has recognized problems, they are recognized only in what is termed the "acute phase." The assumption is that any ongoing problems are related more to the personal makeup of the individual than to the work place. Often the board uses this approach to determine that the individual worker has a pre-existing problem which has exacerbated the disability that he or she suffers from. The board then in turn seeks to reduce the benefits to the worker, who may none the less be totally disabled, arguing that the disability has been enhanced by a pre-existing, noncompensable condition.

We believe such an approach is totally inconsistent with the no-fault nature of workers' compensation in Ontario. The Workers' Compensation Board should not limit the benefits paid to a disabled worker on the basis of prior conditions which, prior to

the accident at work, may never have affected his or her ability to accomplish this assigned work. Indeed, even in those instances where the prior condition has affected the ability to work, to reduce the worker's compensation--which is based on preaccident wages--because of the pre-existing condition, is to doubly penalize the victim.

In our opinion, the Workers' Compensation Act should be amended to include disabilities from work-related stress. The worker should receive compensation to the full extent and duration of the disability, regardless of any prior contributing factor.

We would expect that the proposed Industrial Disease Standards Panel would make it an urgent first priority to address the problems of work-related stress.

In conclusion, there are several provisions in Bill 101 which have come under fire from employers' groups. We believe that these provisions are reasonable improvements which should not be removed--in particular, the repeal of section 21 which requires workers to submit to employer doctors; the removal of the one-day waiting period before benefits are payable; the improvement in file access to injured workers and the limitations on confidential medical information going to employers; the removal of the bar to supplementary benefits when a worker is in receipt of the Canada pension plan disability benefits; the increase in the covered earnings ceiling; the limited indexing of supplementary benefits, and the inclusion of a schedule 4 of occupational diseases with irrebuttable presumptions.

These are advances over the current system. In many cases, such as ceilings and indexation, we feel these measures should have gone further. In others, such as schedule 4 and file access, we hope that regulations and administrative procedures will fulfil their promise.

But in all these cases we urge the committee to consider the provisions as absolute minimums that must not be traded off.

Respectfully submitted on behalf of the Ontario Public Service Employees Union.

Mr. Chairman: Thank you very much, Mr. O'Flynn. We have had your presentation. I believe Mr. Sweeney has several questions.

Mr. Sweeney: Thank you, Mr. Chairman. Can I go back to your last concern with respect to occupational or work-related stress? At the top of page 16 you recognize that there could be other conditions. I am looking at your first paragraph, the indication of individual problems, social problems and things like that. How would you suggest that those particular concerns would be addressed with respect to occupational stress? Are you accepting the premise--excuse me, I do not want to say something you are not--that it is difficult to isolate the stress factor solely to the work environment, or do you have some experience which would suggest that there are ways of pinning the stress factor directly to the work environment?

Mr. O'Flynn: What we want to do is have a recognition that if, say, people who work in Penetanguishene develop certain social or behavioural problems, the environment of that institution probably bears responsibility for their position.

Mr. Sweeney: What I hear you saying then is that it might be possible to identify, at least in the initial stages, specific work places that are more prone to develop stress than a general work environment situation.

2:30 p.m.

Mr. O'Flynn: Yes, and particular situations. For instance, there are the problems that are related to people who work in jails at the moment because of the severe overcrowding with double or triple bunks. It must have an impact upon the health of the staff who work there, not to mention that of the inmates. We would say that is something that could be identified.

Mr. Sweeney: My concern is that probably most workers would say their particular job involves stress, regardless of where they are from. It would seem to me to be necessary to be more specific than that.

Mr. O'Flynn: They are probably right. Most of the work places do have components in them that are stressful. It would be a matter of degree and the impact they have on the individual.

Mr. Sweeney: Am I correct in perceiving that your suggestion is to be more precise, more specific, and to try to identify those work places which are almost obviously more prone to a stressful situation?

Mr. O'Flynn: I would not agree with identifying some work places that are stressful and others that are not. The incidence of complaints and WCB claims would show over time whether or not the particular work environment brought about these conditions more in one place and less in another.

Mr. Sweeney: I am thinking of other conditions which have now been related more to specific work sites. For example, the question of white hand disease has been identified more precisely with, say, using pneumatic drills in the mining operation. There are other types of work places where, it is my understanding, it would not be accepted, but there are some work places where it has now been more positively related.

That is really what I am reaching for. I am not sure whether that is what you are asking or not--whether there would be a limitation on the number and kinds of descriptions of work places rather than as a general principle.

Mr. O'Flynn: I think a general principle has to be maintained because, no matter how normally good the environment is, there would be particular situations in which the stress and strain in the situation would produce a situation where someone would want to complain.



Mr. McCombie: If I just might add to that, I would follow up your analogy to the white hand disease. That is generally perceived as a problem arising in the logging and the mining industries because of pneumatic equipment, but nevertheless, I would think that certainly if I had a claim from someone with white hand disease and there was some use of vibrating equipment, one would nevertheless follow that up.

What we are saying is there are some obvious areas that have long been neglected that create stress-related diseases. I think it is almost common parlance to talk about burnout in various occupations. Burnout is essentially a stress-related disease.

Certainly, you target those groups to begin with, but that does not exclude people in any kind of occupation who may for any number of factors have stress-related disease from their occupation.

Mr. Sweeney: I guess as a legislator I see where it could have such widespread application. After a certain number of years, literally anyone in any occupation could lay claim to this kind of work-related stress--and they would probably be right, yet that would be an extremely difficult situation to administer or even to pay for.

I cannot see how, as a legislator, I could put into legislation such a broad-based interpretation. I would need something a little more finely defined. You may disagree with me, but that is the problem I am juggling with right at the moment.

Quite frankly, I cannot think of any situation--even a bank teller could perhaps argue that, if he or she happened to be in a situation where there were two or three robberies, from that point on they would be under undue stress.

I certainly know the profession I have come from, teaching, is a most difficult one. We had construction people here this morning saying burnout with a 40-year-old construction worker is certainly a distinct possibility.

I just do not see how you could ever draw the line on that. It would seem to apply to everybody in every occupation.

Mr. O'Flynn: Some more than others.

Mr. Sweeney: There is no doubt about it.

Mr. O'Flynn: And some occupations more than others.

Mr. Sweeney: That is what I am trying to get to, Mr. O'Flynn. I am trying to get it narrowed down a little bit, so that I can get a handle on it.

The way it is now, if you are talking of a general situation with relatively few limitations, I just do not know how I can get a handle on that.

Let me leave it. I understand your concern. If you could be



a little more precise or specific, I would appreciate it as one member of this committee.

Let me go on. May I go back to page 12 of your brief where you talk of medical matters. You made an observation and I am not sure I understand it. I am looking at the third paragraph and the second to last line where you say, "Its significance should be enhanced by the views of representatives considered when naming members to the list of practitioners." Who are the representatives you are referring to? I am missing a connection there.

Mr. O'Flynn: Those are the representatives of labour and injured workers.

Mr. Sweeney: In other words, in setting up the panel from which these medical assessors would be drawn, you want more input from various people who are working directly with the injured workers.

Mr. O'Flynn: That is right.

Mr. Sweeney: Is that the observation?

Mr. O'Flynn: The injured workers and the labour representatives.

Mr. Sweeney: Let me go on. In the last paragraph on that page, you talk about giving a veto power to the tribunal itself. Could you be a little more--unless I am misreading it. It says, "The appeals tribunal should contain provisions for vested veto power...."

Mr. O'Flynn: The tribunal--

Mr. Sweeney: Could you be a little more--

Mr. O'Flynn: --on the part of the workers.

Mr. Sweeney: I am sorry. I still do not understand--

Mr. O'Flynn: The worker would have the ability to say, "I do not accept that particular doctor."

Mr. Yakabuski: It is like selecting jurors in the United States.

Mr. O'Flynn: Something like that.

Mr. Sweeney: I am sorry. I got some impression that you were talking about the tribunal itself, which would have some kind of veto power and that did not make sense to me.

Mr. O'Flynn: It is badly worded. The intent is that the worker should have the right to say, "I am not having that"--

Mr. Sweeney: We are talking about the worker. That observation has been brought to our attention before. I can understand that.

The question about making survivors' benefits in the legislation retroactive has been brought to our attention a number of times as well. On page 7 of your brief, you give us an approximate list of people who would be affected by it. If my memory serves me correctly, we had asked the board or representatives of the board if they could give us some sort of an estimate as to what we would be talking about here. Are these numbers pretty consistent with the ones you would have? Do you have any kind of fix yet on what costs we are talking about?

Mr. Cain: The costs of existing claims will be available to the committee in about two weeks. They will be sent to the clerk of the committee, who will dispense them to all of you.

With respect to the numbers, I cannot recall specifically. I know we provided the committee with some statistics during the last hearings. I must admit I do not recall the numbers.

Mr. Laughren: Using simple arithmetic--if those numbers are correct about the spouses--if there are 5,300 spouses currently who would not be affected by the new legislation, and you wanted to do what was right for them with respect to improving their lot in life, if you just start adding zeros and if you give those 5,300 a lump sum payment, and for example you gave them all \$1,000, it would cost \$5,300,000. If you gave them all a \$10,000 lump sum payment in recognition of the fact that they are now covered under the new bill, it would cost \$53 million. That is pretty crude arithmetic.

Mr. Sweeney: My understanding of the brief is that your recommendation is that they would be brought into the same condition as the new claimants will be when this legislation comes into effect.

Mr. O'Flynn: That is right. They should be given the opportunity to opt in.

Mr. Sweeney: In other words, the 20 to 60 per cent and the--whether you are talking about lump sum payments or the percentages, I think that would be more significant.

2:40 p.m.

Mr. Sweeney: I see the point you are making.

I have one last question. I am going right back to page 4 of your brief where you talk about access to the courts. You rightly point out that the majority of the people who have come before us as witnesses, whether they are representing workers or employers, have indicated they do not want to eliminate the no-fault principle. They do not want us to go back to the courts. You seem to suggest in your brief, however, that there are times, to use your word, when it should not be "limitless."

I am one member of the committee who has expressed reservations about--how shall I put it?--breaching the dike at all. As soon as you give access to the courts for even a limited number of reasons, my experience has been that judges will use

that as a precedent and just open the darned thing up no matter what the legislation says. We have had judges in the past with respect to Ontario legislation simply saying quite frankly, "I do not care what your intention is. My interpretation of the legislation is such and such," or, "My interpretation of the precedents is such and such," and it could really open it up.

Do you share that concern? If you do, can you tell us how we could prevent it?

Mr. McCombie: As we maintain in the brief, there should be a basic no-fault system, but it should be stressed that we do not currently have an exclusive no-fault system. There are circumstances where workers cannot collect compensation, for example, when the injury has been considered to be due to serious and wilful misconduct. It is not totally a no-fault system.

Then there are circumstances under which I think both OPSEU and other people within the labour movement feel injuries and disease have been caused by real negligence on the part of employers. Until such time as the labour movement feels that negligence is being addressed through other means, workers should have a right, where negligence has been proved, for example, to take further action under the Occupational Health and Safety Act.

We point to the example of the asbestos litigation that has gone on in the United States. A massive amount of negligence on the part of asbestos producers and users in that country would not have come to light through a compensation system if there had not been the attempts to clean up the industry that we would like to see here. We are saying that is an option which should be there for workers. It should not be removed as long as workers feel they have a very legitimate right and there has been total and utter negligence on the part of the employer. Until such time as we see such things as criminal prosecutions in which employers are held accountable for their actions--

Mr. Sweeney: I notice you make reference on page 5 of your brief to the Occupational Health and Safety Act. Are you suggesting it would be better to have the kind of protection you just described under the Workers' Compensation Act, or would you prefer to see improvements in or a beefing up of the Occupational Health and Safety Act? Do you have any firm opinion on that?

Mr. O'Flynn: No, we do not have a firm opinion on it.

Mr. Sweeney: Is your reference at the top of page 5 to general conditions, in other words, having access to the courts when you find an unsafe situation, or are you referring to a specific worker who has been injured?

Mr. O'Flynn: We are referring to a particular situation that has developed in which it can be shown that the employer was well aware of a danger and did nothing about it or, in fact, concealed the danger so people were put in jeopardy. In a situation like that there should be access to the courts.

Mr. Sweeney: I understand, Mr. O'Flynn, that some of



your members are not covered by the Occupational Health and Safety Act, unless I am mistaken.

Mr. O'Flynn: Very few.

Mr. Sweeney: They are all to be covered as far as you are concerned?

Mr. O'Flynn: They are all covered, yes. The civil servants are covered.

Mr. Sweeney: Was there not something about hospital workers under certain circumstances being excluded?

Mr. O'Flynn: They are excluded from certain provisions. That is all.

Mr. Sweeney: I remember the legislation going through and I thought there was something--

Mr. O'Flynn: No. It was a significant point at the time, that the civil servants were covered by that legislation. The community college teachers and support staff were also covered by that legislation at our specific request. It is in other areas--

Mr. Sweeney: Has it been your experience that when there is an obvious violation, the occupational health and safety legislation is not an effective medium to bring the charges and remedies you have described? I realize that has nothing to do with the act we are dealing with now, but we seem to be faced with having to do something in one act or the other.

Mr. O'Flynn: Sure. The labour movement has had concerns about the reluctance of the Ministry of Labour to press charges under the act, without going into specifics.

Mr. Sweeney: You have some sense because of your recommendation that this might be more likely to happen under the compensation act than under the present act?

Mr. O'Flynn: We have the impression there is a need to be able to get your hands directly on an employer who is flagrantly putting into jeopardy the health of his workers, and nothing is being done about it.

Mr. Laughren: Seeing that same program together, does it mean when it comes time to make recommendations for appointments, for example, to the corporate board or appeals tribunal, that the Association of Injured Workers' Groups and organized labour--I would assume through the Ontario Federation of Labour--will work out an arrangement?

Mr. McCombie: I do not think I can speak for organized labour. I am with this delegation as a member of the Ontario Public Service Employees Union and we have talked to OPSEU and others in the labour movement about our concerns. This is one of many indications that the labour movement and injured workers, as an organization, have been discussing the changes to the Workers'



Compensation Act and have more or less reached a mutual agreement on a lot of things. As far as appointments go, that is still up in the air.

Mr. Laughren: I always worry about this; divide and conquer.

Mr. McCombie: We are not divided.

Mr. Laughren: No, I am glad to see you are together on this, not that I think the Ontario government would do it deliberately or anything like that.

I have a question on the appeals tribunal. You make a point in there that if the appeals tribunal is going to be independent, it should really mean that. It should not be overruled by the--page 10, is it?

Mr. O'Flynn: It cannot be overruled by the board. It should not be.

Mr. Laughren: We have had some discussion on that very point in the committee with other groups, including the Association of Injured Workers' Groups. The overruling of it makes quite a few of us a little nervous. As one possibility, would you see it as being somewhat liberating if section 86n was amended? I am sorry, you may not have a copy of the bill in front of you. We are talking about section 86n. After saying the board may stay the enforcement or execution of the order of the appeals tribunal, subsection (2) goes on to say that "the board of directors may, in its discretion where it considers it desirable to do so, hold a hearing upon a review under subsection (1)."

That is terribly wishy-washy in two ways. It says "may" and then it says "in its discretion when it considers it desirable." It is totally up to the board of directors to determine.

Mr. O'Flynn: We would rather have someone have final authority, so you can praise them or nail them, whichever they deserve.

Mr. Laughren: That would be the appeals tribunal.

Mr. O'Flynn: That is right.

Mr. Laughren: That amendment I referred to, if you said they must hold a hearing, that would still make you more nervous than--

Mr. O'Flynn: Sure, it is another time consumer.

Mr. Laughren: I have another thing. I did not know whether you had done that much work on the whole question of age differential for survivors. As you mention in your brief, it starts at age 40. There is \$40,000 and then it goes up and down by \$1,000 a year--the cash payment. Then the pension is also adjusted by age.

2:50 p.m.

I do not know whether I am right on this or not, but I have great difficulty with any kind of age relationship about payments. I know you can generalize and say that, generally speaking, certain ages need more money, but there can be so many exceptions to that where just the opposite would be true; the younger will need more and in the next case the older person will need more because of family circumstances.

The whole age thing has me terribly nervous. I do not even know my own mind on it, whether it should be there or whether we should stop making arbitrary assumptions about age and the need for money at a certain age. It really has me nervous.

I am not saying there is no validity to what is in the bill. It just makes me very nervous.

Mr. McCombie: I think the problem here is that you would have to restructure this whole thing. Right now, it is structured in such a way that there is some kind of rough parity in that the younger you are, the larger the lump sum but the smaller the percentage pension you get. There is some kind of rough parity, and those figures change as you get older.

Certainly, we would be quite happy if you got rid of the age factor in the lump sum and said any surviving spouse gets 100 per cent of the deceased worker's wages. I do not think you would find any objection from us and that would get rid of the age factor.

I do not really know how you would do it without totally restructuring this along those lines, with one flat percentage for everyone.

Mr. Laughren: You hate to personalize these things, but in my own case, my wife and I are getting up there in our 40s. With three teen-age children eventually heading, I hope, into the post-secondary system, I can see where the financial obligations in my family will be higher in the next few years than they have been in the past. That is what has me very nervous about this age component.

We cannot solve it here today, but I wondered if other people shared my concern about it.

The Vice-Chairman: Do we have any more questions of the panel from OPSEU?

You have covered the subject very adequately in a considerably shorter time than I thought it would have taken. Thank you.

Mr. O'Flynn: Thank you very much, Mr. Chairman.

The Vice-Chairman: Our second witnesses this afternoon are from the Ontario Mining Association. Would you gentlemen please be seated at the witness table?

This will be exhibit 50, a presentation by the Ontario Mining Association. Please introduce yourselves and your panel.

# ONTARIO MINING ASSOCIATION

Mr. Aitken: Mr. Chairman and members of the standing committee on resources development, you gentlemen are all identified, so I would like to start by introducing my colleagues here from the Ontario Mining Association and particularly the representatives of the workers' compensation committee of the association.

On my far right is Richard Horncastle, secretary of our OMA committee. Next to him is Walter Hardacre, chairman of our OMA committee. On my left is Jim Hughes, the executive director of the Ontario Mining Association; I think most of you know Jim. My name is Roy Aitken and I am president of the Ontario Mining Association and am a senior vice-president of Inco Ltd.

The Vice-Chairman: We apologize for the misprint of your first name. We have corrected it to Roy.

Mr. Aitken: That is good. Thank you.

Gentlemen, you have been dealing with the proposed amendments to the Workers' Compensation Act over a long time and I thank you for your patience and tolerance during previous presentations by this and other groups.

I believe you have received advanced copies of the association's latest brief. We presume and sincerely hope you will address the submission in its entirety and give the concerns and recommendations, which we have identified in considerable detail, your full attention. Anticipating that, I do not intend to read the entire brief. Rather, I shall first begin with a short introduction and then give you a summary of our submission.

The Ontario Mining Association, on behalf of the mining industry in Ontario, welcomes this opportunity to meet with the standing committee on resources development and to present our views on Bill 101, An Act to amend the Workers' Compensation Act.

The member companies of the OMA are listed on the last page of the brief. They account for about 30,000 mine workers. In particular, the association is pleased that it has the opportunity to make comments with respect to deficiencies in the act you are addressing, namely, a new corporate board, improved benefits, an independent tripartite appeals tribunal, an industrial disease standards panel and so on.

As positive as they may be, reforms of the act must be fair and affordable if industry is to survive in an increasingly competitive world.

I want to draw your attention to the fact that, in spite of a consistent decreasing trend in injury frequency rates, WCB assessments continue to rise to unprecedented levels.



Coming to the text of the brief, inside the front page you will find the highlights of the presentation, a brief summary of those highlights which I will present and some conclusions. With the time available at your discretion, there should then be an opportunity for dialogue.

First, dealing with earning ceilings, the association is very concerned that a \$31,500-earnings ceiling, when coupled with the proposed assessment rate increases, may be beyond the financial ability of the mining industry. A letter dated July 9, 1984, expressing those concerns and addressed to the chairman of the Workers' Compensation Board and circulated to several members of the government, is attached to the brief.

The association is recommending that the proposed earnings ceiling of \$31,500 be replaced with a figure of \$28,200 effective July 1, 1985. That is a five per cent increase over the ceiling that just came into effect.

Turning to supplements to temporary and permanent benefits, after being told for at least two years that existing sections of the act, clause 41(1)(b) and subsection 43(5) are major factors in the present alarming increase in persistency rates, we ask why has the government not taken this opportunity to correct the problem? Bill 101, instead, reintroduces the two sections. Now the new clause 42(1)(b) and subsection 45(5) are almost verbatim and liberalize the supplement provisions for permanent pensions.

The association has recommended that the Saskatchewan government's approach to suitable and available work be considered.

Moving next to supplements to older workers, the new subsection 45(7) is an example of the association's concern that supplements to permanent pensions are being liberalized. Special supplement provisions for older workers would appear to add yet another section of the act that could be misinterpreted with possible abuse. The association recommends that this new subsection 45(7) be deleted.

Referring to financing health and safety education, the association is opposed to expanded funding provisions beyond the existing nine safety associations, except to provide funding for similar, albeit not yet formed safety associations.

Regarding the corporate board, the association supports the proposed revision and expansion of a new corporate board and believes that employers must have majority representation on that new board.

3 p.m.

There is also a need for a proper and clear definition of "industrial disease," as well as how it may be appropriately dealt with. The association recommends that this be the responsibility of the industrial disease standards panel and not the board, with respect to the new subclause 1(1)(n)(iii).



In addition, the new subclause 1(1)(n)(iv) should omit the "or 4" since schedule 4 has not been made available and we do not know what it is.

Turning to costs and other related issues, the association continues to repeat its warning that compensation costs are escalating at a rate that may soon be beyond the ability of the mining industry to pay and remain competitive in foreign markets.

Please note that employers do not and cannot look at compensation costs in isolation from all other incremental costs. Compensation costs are just one of several costs and are fast becoming the major element in what is commonly categorized as payroll burden. This adds to the cost of doing business and, when coupled with rising Ontario Hydro rates, the cost of compliance with designated substances programs, rising transportation costs and many others which can be qualified and quantified if need be, the indirectly imposed burden on our industry escalates rapidly while revenues, which are largely determined in world markets, stagnate or decline.

Also, whenever compensation costs are discussed, the unfunded liability of necessity enters the picture. The association has continued to maintain the position that full funding is not needed and the unfunded liability should continue to be calculated on the basis of currently legislated benefits.

We are very concerned about our ability to pay for the currently legislated benefits, let alone additions to our rates for anticipated future increases.

The association, therefore, concludes as follows. It considers that most of the proposals in Bill 101 are good and is supportive of them.

When considering the impact of proposals such as Bill 101, there is a need to relate the costing to the higher rate groups, the mining rate group, for example, instead of using nonrepresentative averages as in the actuarial reports. Then the true cost impact of the proposals on the real world of the employers that are paying the compensation assessments are much more evident. There is a need to correct the troublesome sections affecting persistency rates and for a phased-in approach to the earnings ceiling which is related to the economic situation.

The administration needs to be more closely controlled to eliminate abuse of the system. A tightened approach in concert with realistic earning ceilings will help to make the system affordable.

You should give these proposals, as amended by the association, sufficient time to allow measurement of the impact on the system before considering further major amendments.

The Vice-Chairman: Thank you very much, Mr. Aitken. Mr. Sweeney, please.

Mr. Sweeney: I would like to go back to your reference to older workers. As one running a constituency office--I live in an industrial riding, by the way--I have quite a number of workers' compensation cases. Until very recently, one of the most difficult ones to deal with was the older worker who was injured but who had reached the point whereby those counselling him or her, as the case may, deemed that it just was not practical for him to be retrained, re-educated, whatever the case may be, and yet he could not return to the old job because of the injury.

In my most recent case, the worker was 63 years old. What else would you suggest, if we do not provide a supplement to make up the difference? I ask that question in the light of the fact that it would, I think, be much more costly to retrain or to attempt to rehabilitate with relatively little likelihood of success. In other words, the money is going to have to be expended one way or the other. Why are you suggesting that the supplement is not a good way to deal with the situation? What other proposal would you have?

Mr. Aitken: I think there are two points that we make about the older worker. First of all, the term is a very subjective, indefinite one. There are times when I feel like a very old worker, but I do not think that is what you have in mind here. As long as you use wording of that nature, I think you will have definition problems and potential for abuse.

Perhaps more important, coming to the real point you are driving at, certainly one can deal with this sort of problem under the Workers' Compensation Board, but I do not believe that is what the Workers' Compensation Board is about. As far as we understand it, workers' compensation is to deal with disability, not lack of availability of jobs.

What you are identifying is a social problem which is real, and I believe there are other agencies and other benefits that can handle it. I simply think the WCB is the wrong one for that particular situation.

Mr. Sweeney: In my own experience, each of the people to whom I am referring has a permanent injury. In most cases, it is partial injury. Granted, it does not rule out the possibility of them doing some other kind of work, but the fact that does remain is that because of their age, going back to the kind of work they have done, say, for 30 years, is just impossible because of the partial and permanent injury.

Why would that not be a workers' compensation problem? The man cannot go back to his job, which is the only one he has any experience in; he is too old to be retrained or re-educated, and the only reason he cannot go back is because of his injury, a permanent injury.

I cannot see any other social agency that should assume responsibility for that person, because the injury is the pivotal factor with respect to his inability to go back to work. It is not an unemployment insurance problem; it is not a welfare problem. Whose problem is it?

Mr. Aitken: I would have to agree with you that if the individual was not on as a partial disablement basis and was totally disabled, then he would remain a Workers' Compensation Board case.

Mr. Sweeney: I am not talking about total disablement. I am talking about a person who has a permanent disability--maybe it is 30 per cent or whatever figure you want to pick, but it is partial. In other words, he is physically capable of doing some kind of work.

Mr. Aitken: Right.

Mr. Sweeney: There is no doubt about that. But because of his injury, he cannot go back to the kind of work for which he has experience and has had experience for 30 years.

Mr. Aitken: I am struggling with your words. He is physically capable and is presumably mentally capable, and you know he is because he is doing something; so what is this job that he is doing?

Mr. Sweeney: We will apply it to your industry. Let us say he has a serious back injury. He is listed as being 30 per cent permanently disabled. Even with that kind of serious back injury, we both appreciate there are some kinds of jobs he could do. Physically he is capable of doing certain kinds of jobs.

Mr. Aitken: Yes.

Mr. Sweeney: But the only job for which he has any knowledge or experience is in your business, and he cannot go back to that.

If you are prepared to take him back for part-time work or light work, fine, the problem is solved. But my experience is, at least with the heavy industry in my riding, they are not prepared to take him back. They say: "We are sorry, there is nothing here he can do. We admit that he can do something, but not with us. Find somebody else to give him a job."

Mr. Aitken: I think you will find that within the mining industry there are programs for permanent partially disabled people and they do come back to work, not all of them, but not all of them want to. The fact that some of these programs do exist and people do work is not really addressing the question you are raising.

Maybe behind what you are saying is that he may not earn quite as much with the job he is going to do. I am not sure that it is a question of retraining, because even after retraining he may still not earn as much as he would earn had he been a bonus miner.

Mr. Sweeney: In most of the cases--and I do not want to belabour this--the supplement is simply the equivalent to what he would earn in old age security; in other words, at age 65, which I think is about \$250. We are not talking of large sums of money.



The reference here is a supplement equivalent to what he will get when he is 65. We are not talking about his salary.

3:10 p.m.

Let me just ask one other question. You make reference to the Saskatchewan legislation with respect to suitable work. Our proposals are very similar to the Saskatchewan legislation. We reviewed the Saskatchewan legislation when we were making our earlier report of this committee. What is it specifically about the Saskatchewan proposal that appeals to you? Since most of what we are doing parallels the Saskatchewan proposal anyway, there must be something in there that--

Mr. Aitken: I would like to turn this one over to Rick Horncastle, if I may, and have him deal with it.

Mr. Horncastle: Without going into all of the detail, and I am sure you have read all of the--

Mr. Sweeney: Yes. I guess my question is, since it seems we are awfully close to it anyway, why are you suggesting that we accept that one?

Mr. Horncastle: The Saskatchewan proposal provides--I am just sort of paraphrasing--that if a man is medically suitable to go back to work, he then drops off the compensation. We do not see that in this bill. In other words, if it is a case of disability, he gets compensation; if it is a case of availability of work, he does not. It is not the job of the compensation board to find him a job.

Mr. Sweeney: My understanding of the Saskatchewan proposal--it is in our report, and again you can correct me--is that the job has to be suitable and available. Suitable means he does not do any more damage to the area he has already injured. Available means the job actually has to be available. It is not just somebody saying, "It should be out there somewhere." There actually has to be work available somewhere.

Mr. Horncastle: What is happening now in Ontario is that people are remaining on compensation because their jobs are not there for whatever reason; a place may be on layoff or may have closed down, but they are remaining on compensation.

Mr. Sweeney: Your proposal then is, if there is no medical reason by which he cannot go back to work, he should not stay on compensation.

Mr. Horncastle: Right. There is unemployment insurance or whatever, but it is not the job of the compensation board to--

Mr. Sweeney: That is the aspect of the Saskatchewan proposal that you are particularly addressing yourself to?

Mr. Horncastle: Right.

Mr. Sweeney: I understand it. Thank you.



Mr. Laughren: Mr. Chairman, because of the number of employers and employer groups coming before the committee talking about abuses of the system and so forth, I think the committee needs more information--certainly I do; my colleagues will not let me speak for them, but I am sure they will correct me if I am wrong--the committee needs more information about these abuses if we are to do anything about them as you would like us to do as a committee. That is why we are anxious to know more about these abuses. Where are the abuses occurring? Who is abusing? Is it the workers, the doctors or the board?

Quite frankly, if you said to me, "Amend this legislation so there are no abuses," I would not know where to start. That is what I personally am groping for here.

Mr. Aitken: I think you would have to start back at the board, which has more information about this than anyone else; it has a broader feel for the whole thing. I think you would also find yourself dealing with the medical profession and with the workers themselves. I do not think it is something we are going to be able to define sitting around this table here, but it exists. The board knows it exists.

Mr. Laughren: How do you know it exists?

Mr. Aitken: We employ a large number of people and we believe it exists.

Mr. Laughren: You believe; but we cannot operate on that--at least I cannot.

Mr. Aitken: You may not like what I say from the industry point of view, but please, start with the board, because the board has very specifically identified this as a problem. If you start right there--

Mr. Laughren: I have not heard the board say that abuses are a problem.

Mr. Aitken: I have to find the right person.

Mr. Yakabuski: You cannot start with the board. The board is as much at fault as anyone else, because there are an awful lot of people out there getting compensation who should not be getting compensation, and there are a hell of a lot people out there not get compensation who should be getting compensation.

Mr. Laughren: I am not starting anywhere, Paul. Like John Sweeney, I represent an area that has the odd miner in it.

Mr. Yakabuski: You cannot get your answer from the board, that is all I am saying, because the board does not know itself.

Mr. Laughren: Would you let us try, Paul?

Mr. Aitken: Can I try one other tack? We know that accident frequencies have decreased. We know that the number of

people on compensation has increased. We also know that the number of jobs available has decreased. You have to put those three things together. What happens is that the person who is on compensation stays on compensation because by the time he comes back the job is no longer there.

What is happening is that workers' compensation is providing the security net for something that is no longer the prime purpose of workers' compensation. One of our basic beliefs is that workers' compensation is to deal with disability, not lack of availability.

Mr. Laughren: Let me give you an example, because you mentioned it and it gave me great heart, and I am going to go back to my constituency office with a new vigour and enthusiasm for the hope of the partially disabled workers in my riding.

Ten years ago, if a worker got injured in my area, which is up near Sudbury, in Nickel Belt riding, the doctor would have said: "Here is a back-to-work slip but it is for modified duties, light duty only. Don't you go back and do heavy work or you are going to end up with a much more serious compensation problem and everybody will be unhappy, including the board, the employer and yourself." He got a modified work slip and he went back to one of the two major employers in the Sudbury area, and they said: "Oh yes, we will put you in the dryer. We will give you something light to do." And they did. In the last few years, though, because of belt tightening at the two major companies there, those jobs are no longer available. They are simply not there.

However, if you tell me they are, that is what I meant by saying I am going back to my constituency with renewed vigour. In my experience, those light-duty jobs are not there any more. There may be the odd exception but, by and large, those jobs are no longer there. You end up with a worker getting 50 per cent disability pension. I am sure Mr. Cain, who is highly placed on the board, will correct me if I am wrong here. He has a partial benefit at the board but only 50 per cent. He goes back and there is no more work for that worker on light duty. So the company says: "Go home. We have nothing for you." He is not totally disabled. He may have 20 years' seniority with the company. As a matter of fact, he would almost have to have that much to still be there. He goes home and he has nothing to do.

Who should pick up the difference in that worker's income? I use 50 per cent. It may be less than that. He may be on 30 per cent. Who should pay that? Previously, instead of being off for an average of 10 weeks--which I believe is the correct statistic now, is it not? I am quoting the employers' groups and I assume they are right. The average length of compensation has gone from seven weeks to 10 weeks. We are not quarrelling with those figures. We believe those figures. Ten years ago, that worker was off seven weeks, now he is off 10 weeks. What should be done for that difference of three weeks, which is a very substantial cost? What should happen?

3:20 p.m.

Mr. Aitken: Can I come back at this a little bit? I do not know whether I am going to answer your question. We do not see why the injured worker, after he has recovered, should be in a better position than his colleague who happened not to be injured.

Let us back up to your 10-year time cycle. As you well know, 10 years ago the company I am with was employing something like 17,000 hourly rated workers. Now we are employing less than 10,000. Right there is where a lot of the jobs have gone. That has nothing to do with the WCB.

In the same way, when an injured worker recovers, we do not believe it has anything to do with the WCB. That is a different problem. It is a real and very important social problem, but it is a different one.

Mr. Laughren: What about the example I used of where I think a lot of that seven- to 10-week problem has been caused? I do not have any evidence of it, but my suspicion is that the increase of three weeks is a result of the lack of light-duty work available, and not only in mining companies; I am talking about construction companies and everybody. There just is not that give in the system now that there was 10 years ago.

Mr. Aitken: I think you are probably right. There are fewer light-duty jobs available because the whole system is tighter. The pressures on business are that much greater and if we do not respond to those pressures, we are all going to disappear.

Mr. Laughren: But what happens to this bloke who goes back with 50 per cent disability? He cannot work. Who should pick up the difference? Who should make sure he can pay his mortgage and all that kind of stuff? Whose responsibility is that? He is in this predicament because he has a disability.

Mr. Aitken: Do you want to try this, Dick?

Mr. Horncastle: I would go back to the original comment. We have been talking about abuse, and maybe abuse is not the kind of word I like to use with respect to the act. But when we meet with the actuarial department up there, we are very concerned about the costs. They are escalating from seven to 10 weeks. We meet with the actuarial department--

Mr. Laughren: At the board, you mean?

Mr. Horncastle: Yes. They tell us the biggest problem is length of time on benefits or persistency rates or whatever you want to call them. We ask them what the problem is. They tell us a good part of the problem is the present structure of clause 41(1)(b) and subsection 43(5), in that people are staying on benefit longer. From an employer's standpoint, we have to look on that, for want of a better word, as an abuse of the system.

Admittedly, it is not the worker's fault that he does not have a job to go back to; but with respect, it is not necessarily the company's fault either. One worker is injured, but there might be 20 others out there who do not have a job and who were not



injured. This is an economic problem. It is not the problem of compensation to deal with that one fellow when there are 20 others who are not working.

Mr. Laughren: Even though he is off work because of an injury on the job?

Mr. Horncastle: No. We are talking about the fellow who is reportedly able to go back to work.

Mr. Laughren: You mean full duty?

Mr. Horncastle: Yes.

Mr. Laughren: That is a different matter.

Mr. Horncastle: This is what we are told by the compensation board's actuarial department. Why else would the persistency rate go from an average of seven weeks to 10 weeks?

Mr. Laughren: Because of economics.

Mr. Horncastle: They are not having any more serious accidents than they were before. They are the same kind of accidents. It is just that the injured workers are staying off work longer, basically because there are no jobs to go back to.

Mr. Laughren: I understand that. You are talking about a worker who gets hurt--I think that is what you mean--and who obviously had a job when he got hurt. When he is better again, that job has evaporated, because of a layoff, a shutdown or whatever. A construction job may be finished. That is the kind of example you are using, and I understand it.

What I do not understand is the other case where the worker had a job and the job he was doing is still there. Somebody else may be doing it now, but he is not doing that job because he was injured. That is the problem I have.

Mr. Horncastle: That would be another part of it, which I think Mr. Aitken addressed by saying it is because of the economic situation. There are not as many light-duty jobs.

Mr. Laughren: But who should carry that person?

Mr. Horncastle: That is a good question.

Mr. Sweeney: If he were not injured, he would be able to do the job that is there. The only reason he cannot do the job is that he is injured.

Mr. Horncastle: Maybe. He might have been laid off.

Mr. Laughren: No, I am assuming he was not laid off because he has seniority. Right?

That is what we are trying to wrestle with. I do not know how you can shift that responsibility to anybody else.



Mr. Horncastle: We do not have any handle on the numbers of those as related to the ones who are getting compensation and are medically fit to go back to work. We can only go by discussions with the actuarial department at the board when we go up there to try to address these factors.

We do not have quantitative figures to show. They tell us this is what is causing much of the problem. We assume what they are also talking about is the guy who is available to go back to work but does not have a job to go to.

Mr. Laughren: It must be very expensive to create a light-duty job for an injured worker.

Mr. Aitken: Some local light-duty jobs exist but to create one would be very expensive. Yes, you are right.

Mr. Laughren: It is cheaper to pay the higher assessment, is that right?

Mr. Aitken: That is not the point.

Mr. Laughren: It is not desirable. I am not saying it is.

Mr. Aitken: No, that is inviting more abuse of the system. That is not what the system is meant for.

Sooner or later you are going to end up with the medical profession. One of the problems we see in this is that the employer's position is being weakened under these new regulations.

If you look specifically at sections 37 and 38--no, I am sorry, I have the wrong ones. Which are the ones where we had the right to seek a second medical?

Mr. Horncastle: Sections 21 and 22.

Mr. Aitken: Okay. That is now being deleted, I think, in the wording of the act. We believe it should be reinstated.

I know the argument is, "It was there and you never used it," but the fact that we did not use it did not mean it was not an important factor, because everyone knew it was there and could be used.

Something is being lost in this. When the ability to determine medical status is reduced, you are losing something and you are inviting the possibility of abuse.

Mr. Laughren: I will not go on, Mr. Chairman, but I am uneasy about the broad brush of the industry in its use of the word "abuses." It sort of gives me a funny feeling.

You know where I am coming from, and so forth, but it gives me a funny feeling that these things should be said without evidence that it is so. There are a lot of underlying problems there that have more to do with it than abuse, such as the economic conditions you are talking about.

Anyway, thank you, Mr. Chairman.

Mr. Riddell: Mr. Chairman, I guess it is not unusual that I am not quite so inclined as my colleagues are to pass legislation that gives preferential treatment.

I want to go back to Floyd's example. He has a worker who has sustained some kind of back injury. It might have been a slipped disc. He was treated for that slipped disc, but the doctor felt that if he went back to the same kind of work there was the possibility that that disc could slip out again. So he went back to his employer, who gave him light duty, so he would not be further injuring his back.

On the other hand, there is the chap who was born, for the lack of a better term, a weakling. He endeavoured to do heavy work, whether it be in mining or construction, only to find that he did not have the physical stature to be able to do it. So he went to his employer and the employer said: "We will give you light duty. We will put you on a job where strength is not a factor."

3:30 p.m.

To come back to Floyd's example, there is a layoff. The chap with the back injury has good physical health, apart from the fact that if he was to do heavy lifting he might slip that disc again. We have this other chap who did not have the strength to do the heavy work in the first place and had to go to light duty. They are both laid off.

Why should we be giving preferential treatment to the injured worker and completely ignoring this guy who was not able to do the heavy work in the first place and was assigned to a light-duty job?

I do not understand it. I do not see how you can pick one person and say, "We are going to compensate you," and to the other guy we are simply going to say, "Well, tough luck."

Mr. Gilles: May I ask a supplementary to that? In the normal course of events, if you hired a man on to work in a mine and he proved, after a period of time, to be incapable of doing the work, would you normally post him to light duty or would he be fired?

Mr. Aitken: We do not normally post people to light duty. There is nothing normal about being posted to light duty.

Mr. Gilles: That is what I thought.

Mr. Aitken: One of the things we do examine them for on hiring, although Mr. Laughren knows it is some years since we have done any of that, is we do look very hard at backs and we try to ensure--

Mr. Gillies: I am not being critical in that regard. It

just makes sense to me that in the course of events, if you hire somebody in a private enterprise to do a job and he is not capable of doing the job, he does not last that long.

Mr. Riddell: No, wait a minute, Phil. Let us say the person is also equally capable of doing office work. He chose to go into the business--whatever industry it was--to do the heavy duty work because it paid him more money. But when he found he could not do it and the employer found he was equally capable of going into the office and doing office work, that is where he went.

Mr. Gillies: Yes. I am not saying it could not happen.

Mr. Riddell: But now we have a layoff. This guy goes, as does the injured worker, and what we are wanting to do is pass legislation to give the injured worker preferential treatment over this other fellow who is just out of luck. Where is he going to go any more than the injured person can go for some kind of--

Mr. Gillies: I am not saying your example could not happen. I have worked in a number of factories and if someone is hired in to the plant and he is not capable of doing the work, most times, in my experience, he leaves; he is not there any more.

Mr. Riddell: Well, I have a more compassionate group of employers in my riding.

Mr. Gillies: You must.

The Vice-Chairman: Have you any comments on Mr. Riddell's statement or hypothesis?

Mr. Riddell: I would have to think they are supporting me in my--

Mr. Gillies: Well, they are not objecting.

Mr. Aitken: I thought Mr. Riddell really was making a statement. Actually I did not get a question at the end of it.

Mr. Hennessy: It wasn't long enough for a statement.

Mr. Gillies: Well, can you answer my statement then?

Interjection.

Mr. Aitken: Put a question mark at the end. Yes.

Mr. Riddell: All right. I will put a question then. Do you see the merit in that kind of preferential treatment?

Mr. Aitken: No, I do not see merit in preferential treatment in any area. I think one of the unfortunate facts is that we are not doctors; we are miners and we do the best thing we can with the medical advice we get with respect to hiring and employment. That is an area where there is an opening for abuse of the privileges of the act.



The Vice-Chairman: Are there any other questions for Mr. Aitken or anyone on the panel from the Ontario Mining Association?

Mr. Sweeney: May I raise just one further question? I have had a chance, since I questioned you a few minutes ago, to go back and look at our committee report of December 1983, which contains the Saskatchewan proposal. I notice that under the heading or the interpretation "suitable," there are four distinctions. The fourth one is an occupation which does not place unrealistic demands on the worker. Then it goes on to clarify that, or to explain it. It says, "The latter may take into the consideration a worker's age, geographical location, education, training, language skills, ethnic background, etc."

I would think that would deal with the older worker about whom we were talking before. In other words, you are placing unrealistic demands on that worker because of his age, his education, his training or his language skills. Do you not agree?

Mr. Aitken: I am not an expert on this thing.

Mr. Sweeney: No, I am not either, but I am just saying that if you accept the Saskatchewan proposal, it would seem to me you would also be bound to accept the fact that with an older worker those factors need to be considered.

Mr. Aitken: Yes.

Mr. Sweeney: Do you have a definition of an older worker? You indicated yourself that you were not sure. What would seem reasonable to you?

Mr. Aitken: That is a very difficult question to answer, really, because I have seen some very young men who were 65 and unfortunately had to retire. I have seen some other old men who were at least 40. That is the problem with this "old man" thing.

Mr. Sweeney: Let us put it in context. We are talking basically of a person who has a permanent though partial injury, but because of age, perhaps education, maybe language background, it would be impractical, given the number of years he has left, to retrain or rehabilitate him. Could you put an age framework in there? What would you think would be reasonable?

Mr. Aitken: We would have to think about the amount of training that was required.

Mr. Sweeney: Take a typical semi-skilled worker in your operation, a person who probably, and maybe I am wrong here, but in many cases would not have completed high school and therefore would not have the academic background to take upgrading or training in a number of areas; a person who may have worked for you for 25 or 30 years and therefore has developed a series of skills which are selectively suitable for your kind of work but probably are not transferable to another kind of work. Generally speaking, we are talking of that kind of person, more often men than women so we will say men in this particular case. What would be a reasonable age that you think, from that point on, it really does not make much sense to attempt retraining?



Mr. Aitken: I cannot really speculate on that, because you are sort of pushing me back to a point where the individual you are looking at does not have any high school education, maybe he came out in grade school and has been working for 30 years. I do not know whether he has kept up his abilities or whether he has let them slide. I do not know what his capabilities are or how long it is going to take to train him. If it is going to take five years to train him, there is no point in training a guy who is 55 years of age. If it is going to take three weeks to train him, sure, let us train him. That is a wide range. Clearly, those are extreme positions.

Any time you look at retraining an individual you start looking at aptitude. That is number one. What is the guy likely to be able to handle? There is no point in trying to turn him into an accountant if he cannot add. You are looking at individual cases every time and I think if you try to write a definition in here, you would have great trouble with it.

Mr. Laughren: You do not agree with putting an age in there. We do not either. I do not think most of us do.

Mr. Aitken: I think it varies very much with the individual and his capabilities.

Mr. Sweeney: This is my last question. As a general rule, would you be prepared to accept the recommendation, let us say, of the rehabilitation officer of the board if he says: "We have looked at this fellow, we have looked at his background, we have looked at the potential for retraining and we have looked at the number of jobs that could be available after we are finished. In other words, there is no sense putting him through a year's course as a welder if he does not have a hope in hell of getting a job as a welder when he is done and, therefore, we simply recommend there is no point in going through rehabilitation"? That could be someone as young as 55. You do seem to fall back on the individual nature of the assessment.

Mr. Aitken: Sure. You have to have some confidence in the individual who is making the assessment.

Mr. Sweeney: I am trying to understand the point at which we can reach some agreement or some consensus that such people do exist and there is really nothing else practical to do with them.

3:40 p.m.

Mr. Laughren: What we really have trouble with is, that person you used as an example, the 55-year-old worker--who would still be doing his regular job presumably, because at that age he has a lot of seniority and so forth--gets injured and can no longer do his work and can no longer get another job, because of language, or lack of skill and that kind of thing. Should that person be a responsibility financially of the Workers' Compensation Board if it is because of an injury on the job where he is no longer able to work? That is a tough one.

Mr. Hughes: I might point out that with respect to the older worker in the definition, I know this was discussed at quite some length by the committee where there appeared to be a consensus. Subsection 45(5), which really replaces subsection 43(5), provides the supplements for permanently disabled persons regardless of age. Under the existing statute, we question the need for "older worker."

Mr. Laughren: It will cost you more.

Mr. Hughes: We perhaps suspect that there is more--

Mr. Sweeney: Surely the distinction is that a younger worker potentially has so many years to be employed that it makes sense spending even two or three years to retrain him if he has another 25 or 35 years to work, as opposed to an older worker, let us say for the sake of discussion, between the ages of 55 and 60, or even over 60 but not yet 65.

After you have finished retraining and rehabilitating him, because of his age and educational background, he may have only a year or two left to work. At that point, the chances of his even getting a job are not great. Let us face it, if someone comes to you for the first time and he is 61, 62 or 63 years old, even though he has spent three or four years retraining himself, you are not likely to give him a job and neither is anyone else.

There is a distinction when you talk about the older worker. I am quite prepared to admit that I do not know what the magic cutoff is, but I am prepared to say to you from my own experience that these people do exist and there is no--at least I have not seen it. Rehabilitation officers with the board itself have drawn to my attention that there is no other practical alternative for that man. We are all kidding ourselves if we think we are going to go through the motions and put him or her through the motions, and that at the end of a period of time there is going to be a job for him or her. There is not.

I think they are the ones we are looking at. I do not want to belabour it. I guess all I am trying to do is to highlight for you the difficulty we have as legislators to recognize those factors in drafting the statute.

Mr. Aitken: I think I do appreciate what you are saying. The thing that we are trying very hard to avoid is a situation where the workers' compensation system becomes the total security blanket for the work force, because just as we have lost numbers in employment over the past five or 10 years, there is no saying that we are at the end of the road on that yet.

There will be changes in industry over the next several years. The nature of the industries may change. The whole business may change. If that happens, there may be fewer jobs. If the casualties of that situation have to end up on WCB, then I think we are going the wrong route, because the companies do not have the financial ability to support that. We certainly recognize that there is a social problem, but the whole thing is to say that perhaps that WCB should not be the safety net.

I will not repeat the last paragraph in my letter to Lincoln Alexander, but it really was about, could the company carry the cost? Since then, I would like to quote from a letter from one of our member companies that was a follow-up to this thing.

Let me see if I can pick this up: "The simple conclusion is that if the earnings ceiling was to be increased from \$26,800 to \$31,500, and rates increased annually by 15 per cent over three years to provide full funding and inflation protection, our operation at Virginiatown employing 400 persons will be closed in less than one year."

That is what you are up against. That is really what we are driving at.

The Vice-Chairman: Mr. Aitken, just for my own edification, while you were discussing with Mr. Laughren you mentioned that you have not hired many people in the last three years, but that you were possibly giving them a more stringent medical examination now than in prior times.

Mr. Aitken: No, we have always had medical examinations, and backs have always been a very important factor in the medicals. Naturally, for a miner--it is heavy work--you would concentrate very heavily on that. In fact, I am not sure precisely when it was that we were last in a hiring mode. Can you recall?

Mr. Laughren: I am not that old.

Mr. Aitken: It is a lot longer than that.

The Vice-Chairman: It has been traditional. It has been your experience and you are satisfied when you have hired someone that he is physically able to handle that job?

Mr. Aitken: To the best of our ability. In doing that. it does not always work out, but most times it does.

The Vice-Chairman: Thank you very much for your presentation. The committee is doing quite well this afternoon.

Mr. Laughren: Just a matter of procedure, I was talking to our chairman this morning about--

The Vice-Chairman: I have this clause-by-clause debate.

Mr. Laughren: Are you going to raise it now?

The Vice-Chairman: We are raising it right now.

There is a message here from your morning chairman that we will now be discussing the dates for the clause-by-clause debate on Bill 101. We are open for suggestions and any other input that might be helpful towards arriving at times that will be suitable to most of us, if not all.

The first two weeks of the month of September are the only two available weeks that this committee may meet; so our restrictions are down to that.

Mr. Laughren: I did not know those were our restrictions, but I think that is the time most of us would like to get it out of the way anyway. My only problem is going to be that first week. I suspect a lot of us--

The Vice-Chairman: Is there something going on that first week?

Mr. Laughren: I think a lot of us would not be terribly keen to start on September 5 even, which is a Wednesday. Because I think a lot of us will be in our ridings until late Tuesday night celebrating, would the committee be prepared to sit on perhaps the Thursday and Friday--only two days that week--and make up that extra day the following week? I throw it out as a suggestion.

Mr. Riddell: First of all, why are we restricted to the first two weeks in September? Are these rooms going to be used for--

The Vice-Chairman: I believe this is a designation by the House. I believe it is the scheduling with other committees.

Mr. Riddell: When they made that designation, I am sure they were not aware of the federal election at the time, were they?

Mr. McNeil: Not very likely. I do not believe John Turner consulted us at all.

Mr. Riddell: If we were to ask for special permission, could we not meet? I am not agreeable to meeting at all the first week in September. The second and third are all right with me.

The Vice-Chairman: Mr. Riddell, I tend to agree with you, but then that is only two of us.

Mr. Havrot: I do not know how many members of the public accounts committee are sitting on this committee, but we are sitting for the full four weeks this September following Labour Day.

The Vice-Chairman: I have just been advised by the clerk that the House leaders could reconsider this, in light of the events that have occurred since the original scheduling. Would we be agreeable to have that occur, as opposed to possibly having a violent argument here as to whether we do or do not run the last two days?

Mr. Laughren: I do not really care when, but my problem is that I would really like to know--I say now, but I do not mean this very minute, but very quickly--so I can do some planning in my own riding. I know my problems are not other member's problems, but I do have a very large riding. For me to go up there, I need to plan ahead and all that sort of stuff. I am mainly concerned about making the decision now or very shortly as to when we will sit. I can live with when we sit. It is a question of knowing ahead of time.



The Vice-Chairman: Mr. Clerk, do you think the House leaders could consider this rather soon?

The Clerk of the Committee: I do not know.

Mr. Laughren: They may be away.

Mr. McNeil: Perhaps a phone call.

Mr. Sweeney: What is wrong with the proposal that was made, Thursday and Friday of that first week and, say, Monday to Thursday of the second week?

Mr. Laughren: We still end up with six days.

Mr. Sweeney: We have the six days. We have the same two weeks. I could live with that. You cannot make it, Jack?

Mr. Laughren: What about the two weeks then? What about the week of September 11 and September 18? Does that throw anybody into a--

Mr. Riddell: That suits me all right.

Mr. Laughren: But you cannot meet anyway, can you, Ed?

Mr. Havrot: No.

Mr. Laughren: John, what do you think?

Mr. Sweeney: It does not matter to me. I would prefer the first two weeks, but I could live with the second and third.

Mr. Laughren: I do not know the schedules of all the members, but I cannot imagine the House leaders caring which weeks we sit as long as there are members to sit.

The Vice-Chairman: How would it be if we gave it some consideration, looked at our schedules and discussed it again tomorrow?

Mr. Sweeney: Or if you could have some sort of answer for us by Thursday. That gives you two days to round up people.

Mr. Laughren: We would have to do some work on that.

The Vice-Chairman: There is a definite "maybe" on the floor here.

Mr. Sweeney: It is my understanding the alternatives proposed so far are two days in the first week and four days in the second week or the existing three days in the second week and three days in the third week.

The Vice-Chairman: Into the third week.

Mr. Sweeney: Those are the two proposals. As far as Mr. Havrot is concerned, it does not matter. You are booked for the whole month anyway, so it is immaterial to you.

Mr. Havrot: Yes. I do not know if other members of this committee are on the standing committee on public accounts. I would have to check the list and see.

Mr. Sweeney: The only other standing committee I am supposed to be involved with is regulations and other statutory instruments. I cannot remember when it is sitting. I think it is almost the same time.

Mr. Laughren: When is the Queen coming? The end of the month?

The Vice-Chairman: The last week of September and the first week of October.

Mr. Sweeney: I believe it is September 27 to October 4, if I am not mistaken.

Mr. Laughren: Doug, is it your sense that the Queen is here from the 27th to the 4th?

Clerk of the Committee: I believe the Queen arrives in Toronto on September 28.

The Vice-Chairman: She is in the great part of Ontario I come from before that.

Mr. Havrot: He has forgotten.

The Vice-Chairman: No. I was not intending that at all.

Mr. Sweeney: Let us see if we can confirm it by Thursday. I am in the same situation and I would certainly like to know.

The Vice-Chairman: Thank you. The meeting stands adjourned.

The committee adjourned at 3:53 p.m.



CAD6N  
XCL2  
-S78

R-42

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, AUGUST 2, 1984

Morning sitting





## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

Substitution:

Hennessy, M. (Fort William PC) for Mr. Lane

Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation  
Board

Witnesses:

From the Labour Council of Metropolitan Toronto:

Buonastella, O., Secretary, Health and Safety Committee

From the Ontario Professional Fire Fighters' Association:

Beattie, D., Workers' Compensation Representative

Hothersall, E., Secretary

McPherson, P., Workers' Compensation Representative

LEGISLATIVE ASSEMBLY OF ONTARIO  
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, August 2, 1984

The committee met at 10:05 a.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming the adjourned consideration of Bill 101, An Act to amend the Workers' Compensation Act.

Mr. Chairman: I recognize a quorum. I think from now on we will send a bus around to pick everybody up. That is the way we seem to arrive on time for our meetings.

Mr. Watson: You know who was late yesterday morning.

Mr. Chairman: Yes, but only by one minute. I looked at my watch.

We have three delegations to hear this morning--

Interjections.

Mr. Chairman: I am trying to see how many people we have. We have about about three quarters of an hour for each of the delegations. That will allow us a bit of overplay if we have to worry about that.

The first delegation is from the Labour Council of Metropolitan Toronto; Mr. Orlando Buonastella. I understand you do not have a written brief, Mr. Buonastella.

Mr. Buonastella: No, I do not. We will probably be submitting one later on. Because of holidays we were not able to complete one, but we have the main meat of it to give you today.

Mr. Chairman: Okay. Would you like to proceed?

LABOUR COUNCIL OF METROPOLITAN TORONTO

Mr. Buonastella: I welcome the opportunity to address you. I would like to start by welcoming the relative improvements that have been made in Bill 101. For example, there is the question of obtaining the supplement; payments under the Canadian pension plan are no longer a bar to receiving it. There is also the reinstatement of the old age supplement, the repeal of the old section 21, the end of the one-day waiting period and so on. We welcome these steps.

We also welcome the fact that Weiler's so-called wage loss system for permanent disabilities has been rejected. We had argued previously that it would have been quite a step backwards for permanent disability workers, injured workers, to be under Weiler's scheme.

I believe that in rejecting this so-called wage loss system the government and the committee have accepted that injured workers with a permanent disability do not only suffer financially. They incur not only a loss of wages; they also have for life the pain and suffering that result from permanent disability. Many of the signs that injured workers were carrying with them when they were demonstrating and picketing had the slogan, "A pension for life for disability for life," which underlined that sentiment.

Despite these relative improvements, which as I said we welcome, it seems the benefit structure we now have in place, the status quo, has stayed essentially as it was. We believe that for a temporary disability there should be no loss of income. The new system is going to be paying the equivalent of 90 per cent of net wages. We think it should be 100 per cent of net earnings for temporary total disability.

We do not accept the argument that injured workers have to have an incentive to go back to work, because it is not the injured worker who decides when he or she is ready to return to work. The incentive is not with the injured worker because the decision is not for him or her to make. It is the doctor, the specialist, who decides. The argument that there needs to be an incentive is not valid, from our point of view. There should be absolutely no loss of earnings.

The area that is crucial for workers' compensation is permanent disability. This group of people, who are going to be disabled for the rest of their lives, partially or totally, are the backbone of the system. It is these people who have come out consistently, and I am convinced they have impressed the committee with their stories, by explaining to you their dramas, their situations, by their demand for cost of living adjustments and their explanation of the devastation caused by the injury, not only to themselves but also to their families.

We submit it is this group of people who need the compensation system most. We should look after them because they are the people who will suffer for the rest of their lives from the effects of a work injury. There is a structural problem within the system that we must address and solve.

Weiler told us in his original green paper that the average pension in Ontario is 13 per cent. I read a brief recently that suggests it is now a little bit higher, but we are talking about a very low average of permanent disability award. It is the people who cannot return to work who have to survive on these pensions. You know very well from the work you do in your constituencies that there are many examples of permanent disability pensions awarded by the board that are extremely low compared to the extent of disability.

The classic case is the injured worker who has a 15 or 20 per cent WCB disability. Basically he is competitively employable, because the disability award is not too high. Yet the Canada pension plan will consider the same worker totally disabled by the same disability, which is a contradiction. That seems to us an

indication of a structural problem in regard to permanent disability awards, which are quite low.

We believe there are three main reasons why permanent disability awards are abnormally low. The first reason is that the permanent disability rating schedule, the so-called meat chart, is outdated and has little relevance to the impairment of working ability or working capacity. This applies especially to back disabilities, which are severely underrated. You may be aware that the British Columbia compensation board has in the past decided to upgrade permanent disability awards for backs. We urge you to do the same immediately. We also urge that you recommend an immediate overhaul of the permanent disability rating schedule, so it is updated to the 1980s with all the recent scientific and medical information we have, and that the process be open for public input.

The second reason permanent disability awards are low, in our opinion, is that they are assessed by doctors who are trained, housed and paid by the compensation board. They may be very good doctors and very decent people--that is not in question--but we believe that when they are put in that position, they lose an arm's-length relationship with the patient and with the board. Thus they lose the independent perspective necessary to make an objective medical evaluation of the worker's condition.

10:20 a.m.

A pension assessment lasts for only a few minutes. Many decisions are made by surgical consultants, or rather medical advisers, who look only at the files; they do not look at the patients. Surely this process and the case load they have are necessarily not going to give the best objective results.

We urge that the treating doctor and the specialist be the people who are provided with the way the board evaluates permanent disabilities so that they can make an estimation. After all, they are the ones who have treated the patient all the way through. It is the treating doctors and specialists who have seen the worker from day one, prior to the injury and after the injury. They can make the decision looking at all the factors at hand.

The third reason is that we believe the Workers' Compensation Board tends to subtract all kinds of conditions that had not disabled the worker before the accident--for example, degenerative disc disease; the so-called pre-existing conditions--from the result of the injury afterwards.

However, I think we should take the worker as the worker is. If the worker was fully capable of performing a job prior to the injury, despite degenerative disc disease, which we are told we all have as we age, then a fair compensation system should compensate for all the effects of the injury. If you do not do that, you are inadvertently going to discriminate against age.

It is natural that while ageing, a person has deteriorating processes going on in his system--for example, in the bones--but we cannot then subtract from that natural ageing process; it is not natural or normal. We should accept human nature and not



subtract natural conditions that are part and parcel of human nature. We should not pay compensation based on the concept of an ideal worker who is 20 years old. Otherwise, older people will not get a fair deal.

I am sure you have heard from other labour groups and injured workers' groups. We are arguing for increased and decent benefits. However, we do not see that as the best possible situation. The best possible situation is that the worker returns to work. Workers themselves tell us repeatedly that they do not want to stay home; they want to become productive again. It is very hard on a person to have to stay home and watch television all day because he is on a disability pension and cannot return to work.

The best possible system is not only obviously to compensate well the people who cannot return to work but also to put the emphasis on rehabilitation to try to return the person to productive employment and social fulfilment.

Rehabilitation is the key to any decent and civilized compensation system. It is also a way to reduce the monetary loss, and the social and psychological effects of the injury on the worker. Your committee has heard several complaints about the lack of effectiveness of the present rehabilitation system. You have heard that from injured workers and from representatives of vocational rehabilitation counsellors. I recall a brief that a local union put in. I think it was at the beginning of the hearings. They said they felt the present compensation system put too much emphasis on statistics and public relations and not enough on getting results.

The rehabilitation division of the board has provided several on-the-job training programs where the wages that the employer would have to pay were subsidized, at least at the beginning. It has also done other campaigns; for example, media blitzes. I also recall hearing songs on the radio commercials where the worker tells the employer: "I am a good worker. I am productive. Please hire me."

All these efforts have not been extremely effective. We believe the board must be mandated by the Legislature and by the legislation to be much more aggressive in obtaining jobs for and retraining injured workers. We suggest the following measures, as a start:

First, make it very clear in the act that the board "shall"--not "may"--make all the necessary expenditures to rehabilitate injured workers and to allow them to return to full- or part-time work.

The current technological revolution, which sees the introduction in the work place of all kinds of sophisticated, computerized, automated machinery, opens a lot of fresh opportunities for rehabilitating injured workers. It is clear why. This technology relies less and less on physical work, which injured workers are no longer capable of performing, and more and more on mental work.

Injured workers may very well be able to perform these jobs. There is a big "but," however: there needs to be retraining. We believe the government and the legislation must make sure that the board will make the necessary expenditures to retrain workers so they can be employed in using this marvellous technological machinery, which can be of benefit but will not be if we do not ensure that the necessary expenditures for retraining and hiring are made.

It is incumbent on you, as legislators, to make sure that the wonderful potential offered by the scientific and technological revolution in progress accrues to not only companies, managers and the wellbeing of the owners of the manufacturing enterprises of this province but also injured workers and workers as a whole.

Weiler proposes in his white paper--I believe it was proposal 19--to give the right to a worker to return to his or her old job, if able, and if no longer capable of performing at that job, to have a limited right to return to another suitable job in the same enterprise. We believe that proposal should be accepted. I want to quote just one sentence from Weiler, where he justified this proposal: "Under the existing act, there is no statutory right to re-employment. Yet the need to secure jobs for injured workers is too significant to remain unaddressed by the legislation."

Before closing, I would like to make a few general points. First, we would like to see automatic, full cost-of-living adjustments instituted in the legislation.

10:30 a.m.

Second, we would like all the new benefits for injured workers of tomorrow that are contemplated in the legislation to accrue to all injured workers--to the injured workers of today as well, especially in the field of survivors and all the other benefits. That, I understand, is quite a concern among injured workers. They want to make sure that everybody is treated equally; that the old injured workers, the injured workers of today and the injured workers of tomorrow all have the same benefits.

Finally, we are totally opposed to having employers in a majority position in the new corporate board. The argument that is put to you is that they pay the shot, they pay the premiums so they should have a majority. As we know, compensation prevents employers from the cost of expensive individual lawsuits. Therefore, they should not have any monopoly on the direction of the compensation board. Indeed, Ontario has always prevented this so far and we hope we can have a system instituted where there is equality of decision-making. I will briefly address the question of cost later.

Injured workers pay for the system very much, not only monetarily--monetarily in an indirect way--but also with their limbs and their blood. We have seen the trauma that comes from these injuries. I am sure you have been impressed by the representations the users of the system, the injured workers, have

made to you. On this point, I would like to compliment the committee for having listened to injured workers repeatedly. I would like to compliment you for it. It has given not only you but also the public a lot of insight into the situation of injured workers.

A lot is being said about the question of cost. It is understandable that some employers do not want to increase the benefit structure; indeed, they would like to see a reduction in the cost of compensation. Since the nature of the game for them is the maximum possible profit, they do not want to see any reduction in the profit levels or in the perceived profit levels.

We believe some employers have a tendency to want to see cutbacks in social expenditures so that the resources that are spent in these fields are freed up for investment and, hopefully, they would accrue more profits to the company. I do not think we should blame them for feeling this way. It is, after all, the name of the game. Indeed, they have organized to make this view known.

A lot has also been said about the deficit in the compensation board. At this stage we are aware that there is certainly a deficit, but it is not because of too generous benefits to injured workers but rather because of the underassessment of employers by the WCB in the past.

I think we have all read the article in the Globe and Mail where that was made clear--that was on July 18, 1984--where Ken Harding of the Association of Workers' Compensation Boards, referring to employers and their complaints about the Ontario board's deficit, said, "They have had their cake and now they want to eat it too."

Some employers have also suggested that increased WCB benefits might stifle the economic recovery. This sounds a little odd because there are so many economic factors at play at this stage--United States interest rates, the state of the US economy, consumer demand, capital spending and so on--that an increase in compensation costs would not make all that much difference in the overall equation. Indeed, increased consumer spending by injured workers would contribute to that very important stimulant in the economy that is consumer spending.

I would briefly like to draw your attention to another cost: the incalculable cost that accidents inflict upon injured workers, their families and society as a whole. We have heard from injured workers about that devastation of themselves and their families in an economic, social and psychological sense.

There is also a loss to the economy in the sense that experienced workers are drawn away from the work force. That is quite a loss. If we abide by the law of the survival of the fittest and say it is too bad, and I am not suggesting that you are, I do not think we are doing a good service. I think you want to provide the best and the fairest system possible in the interest of society as a whole over and above the interests of the different groups that have appeared in front of you.



I would submit that we should consider it a duty to properly compensate the victims of our economic and industrial development and achievements. It is thanks to the contribution of workers, labourers--workers of hand and brain and all the working people as a whole--that we have the province that we see today, the economic progress that we have achieved today.

We owe it to them to appropriately compensate those of us who have not only given our work to this province but have given limbs and blood to this province.

I recall one of the injured workers who spoke on the steps of the Legislature. He addressed a rally of injured workers. He was observing that there should be a monument erected for injured workers, just as there are monuments erected for our dead, for those who fought for our country. The point he was making is that the people who fought and died for our country made an equal contribution to those who worked and died for our country in peacetime.

It struck me because in a very concise example that injured worker was expressing a feeling that was very prevalent among all the workers that day. It was a feeling that injured workers have to have some kind of social priority whereby society effectively compensates and treats them for the contributions they have made.

I know that you as a committee must feel torn. Companies are arguing on one hand for containing costs and cutting back costs, and labour groups and injured workers are appearing before you and pleading for increased benefits. Under these circumstances the natural tendency necessarily is to want to compromise and to go for some sort of status quo. Indeed, Bill 101 is essentially a form of maintaining the status quo, with adjustments here and there no doubt.

We think indeed it is a question of social priority. A decent, good society is judged by the way it treats those people who, like injured workers, are no longer competitively employable and are suffering as a result of an accident.

10:40 a.m.

In the case of injured workers, as we have seen, it is not only a question of being compassionate to another human being, but it is a question of a social duty to be just to people who have made a contribution and have paid for their contribution very severely.

When Mr. Justice Meredith recommended the establishment of workers' compensation in Ontario way back in 1914, he faced the same kind of situation you are facing today. The unions were in favour of a new compensation system and were pleading for social reform, and many companies--not all--at that time were against it. They predicted pretty well the same kind of situation as they are predicting today: companies would go bankrupt; I am not sure if the question of the recovery was in their minds at that time, but the question of competition for Ontario goods was put forward and so on.



Mr. Chairman: Mr. Buonastella, I just want to remind you that members of the committee would like to ask you questions, so reserve time for that.

Mr. Buonastella: I am not taking more than one minute. Thank you. I appreciate it.

Since then, companies have not gone bankrupt. The system is still in place and, indeed, many companies have increased tremendously since then. The horrible predictions that were made at that time have not come true. We suggest that if there is a fundamental reform of the compensation system, we will not see the devastation that is predicted. Ontario industry and manufacturing will continue to operate and to do quite well.

To conclude, Meredith at that time took a very long-range view of the situation and overcame the understandable gut fears of those enterprises that were at that time only concerned about the financial balance books of that year. He took a long-range view. We would respectfully submit that your committee also take the same long-range view in the interests of society as a whole and of injured workers in particular.

Thank you for listening.

Mr. Chairman: Thank you very much. Several committee members have questions. Mr. Sweeney first.

Mr. Sweeney: First, let me compliment you on the articulate way in which you presented your case. Your association is well represented this morning.

I was intrigued by your observation that the use of a pre-existing condition--and I suspect you have discovered, as we have, that it quite often refers to a back injury--could be seen as a form of discrimination on older workers. It is less likely that a younger worker would have that pre-existing condition if, in fact, it is part of the ageing process.

I have argued before the appeal boards, sometimes successfully and sometimes not, that the pre-existing condition did not inhibit the worker prior to his accident, so why should it be taken into consideration after the accident?

Has your organization, in appealing cases for your members, been able to use that as a successful argument? Have you found it has been accepted, understood, respected, or is it like batting your head against a stone wall?

Mr. Buonastella: It is a frustrating experience. I share your view. One of our affiliates, the Labourers' International Union--I have forgotten which local--made a submission some years ago that degenerative disc disease is an industrial disease in the sense that with workers--construction workers, truck drivers and so on--having constant, continuous and cumulative pressure put on their backs, there is a natural aggravation of that ageing process. That argument has been made to your committee.

However, degenerative disc disease is deducted, it seems to me, when it comes to assessing the permanent disability of a worker. It seems to me it is unfair because, if you are deducting it, they are taking the view that the age of workers is about 20 or so. They are taking the view that the worker is a young one.

Mr. Sweeney: So what you are telling me is that, thus far, you have not been as successful as you would have liked to have been in making this kind of appeal.

Mr. Buonastella: No, not when permanent disabilities are concerned.

Mr. Sweeney: Let me move on. Your observation with respect to the right to return to work, particularly with the original employer, is one that we have discussed at length in this committee and for which we are trying to come up with some formula.

One of the problems we run into, though, is with the very kind of industry which you represent, given the fact that a worker in the construction industry may not be with the same company for a long period of time, may not be on the same job for a very long period of time. Obviously, because of the nature of some of the industries and the nature of the kinds of work that is available within your industry, they frequently cannot go back, even if the employer were willing to take them. There just simply is not light work for them to do.

Has your association come up with any way around this dilemma, particularly in your own industry? We can see ways in which we can mandate workers returning to work in an industrial setting, because it is the same employer and the same location. If he can not have the same job, the possibility of other jobs within that industrial setting is there. We come to kind of a dead end when we talk about construction.

I want to get to the technological issue--that is another issue--but besides that, what can we do?

Mr. Buonastella: I frankly cannot tell you the way to overcome the problem, although I think it could be done; it is possible to overcome it. To do so, we would have to sit down with the unions that are in that sector. Some of the unions in construction are not associated with the Canadian Labour Congress or the Labour Council of Metropolitan Toronto, although some are, so it is hard to get that input.

I would suggest to you that we do accept the principle and we do make the reasonable adjustments in those industries in those areas where your problem arises. I think that, if we sit down with the interested parties in those sectors, it is quite possible to make sure that we keep the principle and yet arrive at a reasonable situation.

Mr. Sweeney: Would that interfere with the union's participation in hiring halls? Would there be a conflict with unions' agreements if we put something in legislation that required an employer to take that particular worker back again? I

do not fully understand what exceptions are permitted with respect to the union participation in the hiring practices of construction companies.

Mr. Buonastella: Again, we have only one local from the construction field. Have you had delegations from unions in construction?

Mr. Sweeney: Not recently, no, but we had in our last set of hearings.

Mr. Buonastella: I would suspect that the kind of compromise suggested by Weiler would be accepted by the construction unions who have those practices because it is a compromise that tries to accommodate that concern.

Mr. Sweeney: Let me move on to your observation about technological change and the opportunities that it could present. Part of the problem I see, and again particularly in your own industry, is that many of the workers who get injured are difficult to rehabilitate and retrain and put back to work because they lack a background in education or sometimes a background in language or sometimes they are older. How are we going to get around that?

10:50 a.m.

I agree with your observation that it does open some opportunities, but it just seems to me that the very people who tend to get injured also have a number of other deficits which would make it that much more difficult to prepare them for those kinds of jobs. Am I building the case out of--

Mr. Buonastella: No, I think it is a legitimate question. I am sure you see there are injured workers from a whole variety of industries, not only heavy industry but also light industry and office work. There is more representation of injured workers from all sectors, which gives you all kinds of available people to retrain.

Mr. Sweeney: I have no doubt that, from the whole pool of injured workers, your observation is very apt. My concern is that the kinds of people you are more likely to represent are the ones who come before us more frequently.

Mr. Buonastella: Among those people are those who could quite well be retrained into these jobs I was talking about, as the technological revolution opens up. The impediment for some of the potential workers is that at present the board discourages them from pursuing that because the expense of having them complete a formal education is too great a bar.

I am arguing it should not be a bar and we should make it a priority to retrain them. If you test them and realize it is impossible to retrain them, then you cannot do it and you have to go for a situation where you have the equivalent of an old age supplement in place. The worker is unemployable and you have to accept that.

Mr. Sweeney: While I have seen tremendous evidence of the technological change you speak of in industry, I have not yet seen very much of it in construction. Is it coming to a greater extent than is publicly apparent or is it going to be a longer time before construction has these opportunities?

Mr. Buonastella: New machinery is being introduced into construction as well, but the problem is that this machinery tends to eliminate workers. Construction does remain necessarily a very heavy labour trade. Generally, the problem is that the machinery, when introduced, tends to eliminate workers, so you are--

Mr. Sweeney: Between a rock and a hard place is the expression used.

Mr. Buonastella: That is right, and there needs to be a strong intervention to make sure the benefits accrue not only to industry but also to injured workers.

Mr. Sweeney: Thank you.

Mr. Chairman: Thank you, Mr. Sweeney. We probably have time for one of the two gentlemen on my left to speak. Mr. Laughren asked first, but I will let you two fellows make the decision.

Mr. Laughren: My friend here is the caucus critic for compensation and so he has a higher standing than I have.

Mr. Lupusella: I do not want to get into this type of a competition. I want to give you the floor. Because of the limited time, let me quickly compliment you on an excellent presentation before this committee.

Briefly, I would like to go back to the subject Mr. Sweeney raised, that is, degenerative disc diseases or pre-existing degenerative changes. You have had experience in sending appeals before the board. Sometimes they are successful and sometimes not. I have to state the same thing. Are you of the opinion that classification of pre-existing disc diseases or degenerative changes of the disc must be incorporated within the act, or do you think the present act is so vague it gives an opportunity to the appeal system to judge on the merits of a case? Do you not think we need a specific clause that takes into consideration that these symptoms, if aggravated by the accident, should be compensable?

I understand that within the framework of the present act they are compensable. Based on the experience we have had with the appeal system, most of the time they are not. I think the main problem is based on the definition of an accident and the disablement that has been caused by the accident.

Disablement based on the present policies of the board can be caused, for example, by an awkward position in performing specific duties in the labour market. It can be caused even by a wrong movement; it can be caused by strenuous work. This is the definition of what can disable the injured worker in performing specific tasks in the work place.



I have not yet settled my mind on the definition of "accident" and the definition of "disablement." Disablement, as I previously described, can be caused by certain factors; an accident can be more than that.

In the disablement framework we can take into consideration, for example, the pre-existing conditions of a back that has been aggravated by strenuous work, which is not defined under the definition of an accident because it is not an accident. I might have my back deteriorate to the point that the strenuous work is disabling me from performing certain activities.

Is this disablement issue part of the board's policy or its interpretation, or any interpretation of the definition of an accident which is within the framework of the act? I think you should answer that before I make further comments.

Mr. Cain: The act specifically devotes three subclauses to "accident" and one of them is on disablement arising out of employment. Therefore, your quote about the causation of disablement is a board policy based on that word.

The way in which the board approaches it is that when one has a claim for a back disability, the first thing one looks for is an event--an event not necessarily being at a specific moment in time but not over a terribly prolonged period. If one cannot find an event, then one has to look at the work in total. What is this person doing? Is this work the type of work that could cause disablement?

When we go on and look at degenerative disc disease, the board has held that medical literature does not establish that degenerative disease can be caused by work, but degenerative disc disease can be aggravated by work. If we can find something within the work and also reports from specialists--because I assure you in this particular type of claim specialists' reports are carefully looked at--that suggest the work caused the disability, the aggravation, then we will extend entitlement. That is our general policy for initial allowance.

Just to go beyond that, in reference to pensions themselves, the rule is that once a claim is allowed and a person has a pre-existing degenerative disc disease, it is possible that the employer will get relief under the second injury and enhancement fund for the pre-existing condition the worker suffered prior to the accident, but that does not mean that the injured worker's pension will be reduced because we are giving the employer a benefit on the one side.

11 a.m.

The policy, which is in our board policies and divisional administrative guidelines and in our claims adjudication branch manual, indicates that unless the worker had a pre-existing back condition that was of significance--that the worker was suffering from back disability; it hurt and limited the amount the person could do--that pension will not be reduced because of the pre-existing condition. That basically is the policy.

Mr. Lupusella: I think the explanation given to us does not really contradict the interpretation of my statement. We are faced with the definition of "accident." We are faced with policies that are implemented by the board in interpreting the definition of "accident." We have problems because, though I accept the definition of "disablement," which is not well explained in the framework of the act, I think it is time we gave a clearer definition to the word "disablement" so we at least know what we are talking about. I do not have anything against the wording "strenuous work which might disable the injured worker" or "an awkward position or movement," which is now part of the policy framework in interpreting the definition of "accident."

In my own opinion, I think "disablement" and "accident" are two different words. A lot of discretion is used by the board in allowing or rejecting a claim because the definition is not contained in the act. We have to take a look at that specific problem because a lot of people employed in the construction industry can become disabled at certain times as a result of the strenuous work they have been performing, even though there was no specific accident. Based on my own experience, I have lost most of the appeals when I made a case based on that framework.

The latest one was a woman employed by a specific company for six years. She was wearing a back brace. The employer, the co-workers, everybody knew that. There was an awkward position and the movement disabled her. The board rejected the claim on the principle that no accident occurred. I think the reason for the rejection is the vague interpretation of "disablement" and "accident." There was no specific accident. Disablement was caused by movement and the board rejected the appeal.

I think that people in the construction industry are faced with strenuous work. When a person presents an appeal we are faced with interpretation in the implementation of the policy of the board, which I do not think is fair.

Mr. Chairman: Our time has expired, and I really want to get on with this because we are going to be behind this morning if we do not move on. Thank you for raising that point.

Thank you for appearing before us. We appreciate it. Although the committee finishes today, we come back for clause-by-clause discussion in September. If you are able to submit something in writing, it would be appropriate to have anything you can supply us with.

#### ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The second witness today is the Ontario Professional Fire Fighters Association. Gentlemen, your brief has been circulated to us and you may proceed as you wish.

Mr. Beattie: Mr. Chairman, I will introduce the gentlemen with me. I am Dave Beattie, firefighter for the Hamilton Fire Department. On my right is Ed Hothersall, secretary-treasurer of the Ontario Professional Fire Fighters Association. On my left is Paul McPherson, a firefighter from the London Fire Department.

Mr. Sweeney: Mr. Chairman, before we begin, can I ask this group to please distinguish between this organization and the one that appeared before us a couple of days ago. What was its name?

Mr. Chairman: It was called the Provincial Federation of Ontario Firefighters.

Mr. Sweeney: That is right. On Tuesday. It was the Provincial Federation of Ontario Firefighters, and you are the Ontario Professional Fire Fighters' Association.

Mr. Hothersall: We had a little bit of a split.

Mr. Sweeney: So that we will understand where you are coming from, what kind of people do you represent compared to the kind of people they represent? We can then hear your brief in light of that.

Mr. Hothersall: We represent 4,400 people as opposed to the other group's about 3,800. We represent the majority of firefighters in Ontario.

Mr. Sweeney: Are they both municipal firefighters?

Mr. Hothersall: Yes. They are all municipal firefighters.

Mr. Sweeney: There is no difference between the kind of work your people do?

Mr. Beattie: That is right. There is no distinction. The only thing is that there has been a split in the association. We are the same ones who made the presentation in May 1983. Since that time there has been a split in the association.

Mr. Sweeney: I am not particularly concerned about your internal organization. I just want to know whom you represent.

Mr. Beattie: Right. Both associations still are professional firefighters representing the municipalities throughout the province.

Mr. Riddell: Of course, if you want to volunteer the reasons for the split, we would be most interested.

Interjections.

Mr. Chairman: Perhaps that would be appropriate for a different day and a different forum.

Interjections.

Mr. Beattie: This morning we are appearing before you once again with some recommendations we would like to see implemented in the Workers' Compensation Act. Since the last time we made a presentation, it appears that very little of our presentation, if any at all, was adhered to in Bill 101. We hope at this time to bring to light some more information for you so we

can try to get implemented the things we feel are of great importance to this association and to all firefighters throughout the province.

The Ontario Professional Fire Fighters' Association and its members and officers wish to thank you for the opportunity to appear to before you at this session. We are hopeful that the standing committee on resources development will give consideration to our views when presenting the final draft for the proposed Workers' Compensation Act to the Legislature.

Salary replacements: At the most recent convention of the Ontario Professional Fire Fighters' Association, the delegates passed five resolutions asking for changes to the Workers' Compensation Act, namely, (a) that a fund or insurance plan be set up through the Workers' Compensation Board to provide full pay to widows and/or orphans of a firefighter killed in the line of duty and (b) where a firefighter is deemed to be unfit for firefighting duties, that he be entitled to receive the same salary he was making at the time of his injury plus any increments he would receive if he were stilling working, and, further, if the firefighter does find gainful employment, that the Workers' Compensation Board make up the difference in wages.

The main thrust of sections (a) and (b) above is to ensure that the firefighters of this province are protected against wage loss due to permanent disability or death by accident.

To magnify our concern, you are invited to examine part V of the Occupational Health and Safety Act where the legislation precludes a firefighter from refusing to enter an unsafe work place. We respectfully request that the WCB actuaries study the concept of (a) and (b) above.

11:10 a.m.

Heart and lung disorders among firefighters: The Ontario Professional Fire Fighters' Association is asking that the Workers' Compensation Act be amended to provide a section that would recognize heart and lung disorders as job-related.

The board already has a guideline under minute 22, November 25, 1980. The only thing it refers to is firefighters' inhalation of smoke and various noxious gases and fumes, etc. That is the only information it mentions regarding this. The cardiologists I have talked to said this does not cover all the problems a firefighter can incur while he is carrying out his duties as a firefighter.

In other words, the way this reads and the way we interpret it is that you have to inhale smoke and various noxious gases and fumes. This is not always necessary. There are other factors that are involved in this, such as stress and strain, in carrying out one's duties as a firefighter.

The basic problem here is that the heart, as most of us know, and the arterial system that carries the blood will only carry blood. My understanding is that carbon monoxide and blood do



not mix. So now you have an orifice that is used to carrying just ordinary blood and you are trying to push another article through that orifice; there has to be damage done to the heart over a period of time and to the arteries.

We have all kinds of studies that have been done not only in Canada but throughout the world as well with regard to coronary problems. If any members are interested, I can supply photocopies of all these. I did not want to photocopy all of them if you are not interested as it would just clutter up your desks and you sometimes run out of space. I know I do at home.

Mr. Lupusella: Maybe the clerk can do it for them.

The Vice-Chairman: Mr. Lupusella is suggesting that possibly we should have one copy for this committee so we can refer to it from time to time in our clause-by-clause deliberations.

Mr. Beattie: Yes. Most of the information we have now is supplied to us by the Canadian Centre for Occupational Health and Safety in Hamilton. A lot of it has been used in my presentations before the board on different occasions. We have up-to-date information on this. I will not read it all or we would be here for hours and I know we are strapped for time.

In the employment process this is one of the sections under California law. Anyone engaged in lawful enforcement of fire suppression who manifests heart disease comes automatically under the so-called presumptive clause, which means that the heart disease is presumed to be job-related; thus it is covered by workers' compensation. The current compensation costs for the safety worker with heart disease is estimated to be \$40,000. That has been implemented in California.

If a returnee cannot function as required and the condition is not reversible, and this is almost unusual in coronary artery disease, the incumbent is offered another employment in the county or goes to a disability retirement. Rare is a fireman who selects other work. He chooses instead to take a year off, sick leave at full pay, and then retire.

Since I last appeared before you, I have had two heart attacks myself. That is why our brief is so very short. I am not back to work. I have been off work since September 1983. I just got out of hospital last week again, and I have been informed by my chief that if I do not go back to firefighting, I do not go back to work for the fire department in Hamilton.

So you can see this is a very important article, this heart problem among firefighters. It is one of the main things we would like to see implemented in the act, that it covers firefighters in particular, not just because I happen to be in that category, but I think it is very important.

Data compiled by the city of Los Angeles, California, disclose that firefighters receive more disability pensions for heart disease than any other illness. When compared with

policemen, firefighters receive more disability pensions for heart disease, despite the fact that they employ half the number of men. Such firefighters are admitted to the department only after rigorous medical screening and the reaching of high-level physical conditioning. The findings suggest some specific occupational hazards from firefighting.

That study was undertaken to determine whether the apparent high incidence of heart disease in firefighters is related to the unusual risk factor associated with coronary artery heart disease or whether some unique phase of a firefighter's lifestyle might be responsible. However, there are data that show the incidence of death from heart attacks and ischaemic heart disease is far higher among firefighters than any other general population.

On page 4 you will see tables 1 and 2, which summarize statistics published by the US Public Health Service. These data show that in the older age groups, 55 to 64, where the greatest percentage of deaths occur, the death rate from cardiovascular diseases, including atherosclerotic heart disease, is highest in firefighters. Personnel in this age group would have 20 to 30 years' exposure to the stress of firefighting. Note that the death rate from atherosclerotic heart disease in firefighters aged 55 to 59 and 60 to 64 is more than double the average death rate for the "all occupations" category.

If you look down at the first section there, table 1, in the age group of 55 to 59, firefighters, at the top, was 21.18 per cent and all others was 11.26 per cent. Furthermore, these data show that the death rate from atherosclerotic heart disease is higher in firefighters than in any other occupation studied.

Carbon monoxide: Exposure to carbon monoxide, which reduces oxygen delivery to the heart, can cause ischaemia and even myocardial infarction. This is a hazard to which firefighters may be exposed. If exposure to carbon monoxide is frequent, it could produce myocardial necrosis and hypokineses. High levels of catecholamines have also been shown to produce myocardial ischaemia and necrosis.

Our previous studies have reported rapid heart rate acceleration and electrocardiographic changes while responding to the alarm. Near maximal heart rates for prolonged periods and electrocardiographic changes have also been reported during actual firefighting. I believe you have a paper, and it is produced from London, Ontario.

It states here, for your information: "Firefighters' heart rates have been reported to increase suddenly and dramatically in response to a fire alarm (Barnard and Duncan, 1975). This response has been attributed to a variety of factors, including the physical work involved in the task, the hot environment, the weight of their equipment and the supposed release of excessive amounts of catecholamines in response to anxiety."

On the back, in the fourth paragraph down, is the conclusion: "Based on our findings, it appears that the firefighters' immediate response to an alarm is one of intensive

physical arousal. The emotional response may be substantial but of much less magnitude than the physical component. There is apparently little physical or emotional stress experienced en route to the fire."

Once again, I can supply to this committee photocopies of Heart Disease in Firefighters. There is a three-part section to this, and rather than take your time and read all this, I think they are quite explicit in what they are trying to get across.

Yes, we do have problems as firefighters. It is just like you and I and the rest of us sitting here now talking when something comes in. A hundred and one things run through your mind when you get that alarm. First of all, what is the time of the day? Is it night, is it evening, or is it daylight? What is the day of the week? What buildings are involved? Is it winter? Is it raining? These all have a bearing on what you are going to be responding to.

11:20 a.m.

For example, if you get an alarm in a residential area at four o'clock in the morning on a winter night, the possibility of rescue is going to be great, for the simple reason that all the windows have been closed. The carbon monoxide and smoke buildup in that building does not necessarily mean the flames have been exposed to the outside elements yet. Consequently you could go into that building and find people.

You are going into a strange building you have never been in before looking for somebody you have never seen before. This is running through your mind. You have to find out where the hydrant is and what other companies are responding to that alarm. Other possibilities are whether it is a one-family dwelling or a two-family dwelling.

Then you get to the other extreme. Is it during fall? Is it an institution? Then you would have a bigger rescue problem. Are you going to have enough men and equipment when you get there? Who do you take priority over? This is part of the problem that is running through your mind while the station is giving you the address of where this alarm is coming from.

On your way there, you are thinking about what other equipment is going to be responding with you, plus whether there is water off in that area. Of course, in different municipalities there are systems where they take hydrants out of commission. Are you going to have enough hose to reach the next nearest hydrant or are you going to tell the other company that is following you in that you are not going to catch the plug and the other company will have to catch the plug?

Is there going to be a problem with getting to this place? You have to try to visualize that we are going somewhere--to a home or an institution usually--that we have never been to before. This all brings up the stress and strain on the heart rate, such as has been pointed out.



It is pointed out quite clearly in an article dealing with heart rate response while on a truck. It says that if the exercise excites responses associated with an extensive discharge, they could be involved in the incidence of heart disease observed in firemen. This distribution of emotional stress is thought to lead to premature development of arteriosclerosis. Some firemen experience an excitement response several times during the normal work day, which may cause damage to the coronary arteries.

The article goes on: "We realize that our suggestions that this excitement response to alarms might be involved in the incidence of heart disease in firemen is pure speculation at this point. However, we are continuing our research with this speculation as a hypothesis."

That is from Dr. James Barnard, who is a PhD, department of medicine, UCLA School of Medicine, Los Angeles, California.

Many briefs have been prepared and presented to the government on the need for a strong presumptive clause to give firefighters added protection against heart and lung disorders. In our last appearance, we made a presentation on a presumptive clause that we thought would fit the situation, but according to Bill 101, which we have just received, there did not seem to be any action taken on that.

At this time I would like to read to you from Workers' Compensation in Canada, dated 1983:

"In the Northwest Territories the ordinance provides that where, during the 12 months preceding the disablement, a worker was employed in an industry where he was exposed to conditions that may reasonably have caused the disease, the disease shall be deemed to be due to the nature of the employment, unless the contrary is proven.

"In Manitoba there is no presumptive schedule. There are presumptions in favour of the firefighters with regard to disability affecting the heart, lungs, brains or kidney.

"In Prince Edward Island the regulations provide that any disease peculiar to or characteristic of a peculiar industrial process, trade or occupation is declared to be an industrial disease in relation to the employees of clinics, hospitals, laboratories and sanitoriums."

The meaning of this regulation is obscure. Manitoba has this presumptive clause in there. Diseases recognized--from the same material--are heart attacks and heart disease. There are only two other provinces, British Columbia and Manitoba, that do have heart disease and heart attacks covered by the workers' compensation acts.

Mr. Lupusella: Excuse me, sir. Who is the author of this book?

Mr. Beattie: Terrence G. Ison.



Carcinogens among firefighters: For a number of years there have been many deaths among firefighters in Ontario that have been caused by cancer. Very few of them had little or no warning that the cause of death could have been linked to the proliferation of synthetic organic chemicals. Firefighters are exposed to an increasing quantity of chemical carcinogens products of combustion and off-gassed chemicals from these materials.

In a lecture given to a seminar in Ohio, Ms. Selina Bendix, PhD, had this to say:

"I have collected the following reports of excess cancer incidence in firefighters, compared to the average adult population: excess mouth (buccal) and throat (pharyngeal) cancer (1975), excess lung and lymphatic cancer (1959-61), and excess total cancer and leukaemia deaths.

"A 25-year study of cause of death in active firefighters found a steady increase in cancer in Toronto firefighters of 15.4 per cent in 1945-49 to 38.4 per cent in 1965-70. A doubling of the cancer rate in the last 25 years has been found in a preliminary study of Boston, Massachusetts, firefighters.

"Some workers' compensation boards recognize that cancer in firefighters is most likely job-related and have ruled accordingly. In a recent (1977) report, occupational medicine specialist John Blair Webster, MD, found excess total cancer and leukaemia deaths among firefighters and concluded that leukaemia in an Ohio firefighter was 'the result of his exposure to carcinogens as a firefighter and that 100 per cent of his total and permanent disability is related to his occupation by direct cause.'

"The Ohio Workers' Compensation Board recognized that cancer in firefighters was job-related and ruled accordingly in 1974."

We have all the studies Ms. Bendix has done: The Effects of Plastics on Firefighters; Asbestos Protection for Firefighters; Potential Firefighters' Exposure to Carcinogens; Firefighters' Exposure to Carcinogens; Cancer and Firefighters; Occupational Mortality in Washington State, 1950-1971; and Cancer: A Form of Delayed Fire Damage. We can supply the committee with those.

Just the other day, I received a note from the Canadian occupational health and safety people, which I believe was taken from the Los Angeles Tribune in 1984. It reads as follows:

"Los Angeles city firefighters have a 129 per cent higher chance of dying from brain cancer and a 117 per cent higher chance of dying from prostate cancer than the general population. In addition, one out of every three city firefighters will die of some sort or form of cancer, while in the United States as a whole one in five persons will die this way. These figures were on the rise in 1980. Thirty-four per cent of the firefighters' fatalities were due to cancer, while only 17 per cent died of the same disease in 1950.

11:30 a.m.

"These findings are preliminary results of a \$21,000, city-funded study by the Institution for Cancer and Blood Research. The study noted that the change is in large part due to the change of material that burns in a fire. While 40 years ago firefighters contended with mostly wood and paper fires, they are now constantly exposed to burning pesticides, petroleum chemicals from plastics and seat covers, wall coverings and building materials.

Lyle Hamilton, president of the United Firefighters of Los Angeles, said the study should now lead firefighters to look into the field of physical fitness and equipment. He also cited a critical need for lighter masks and breathing equipment. It should be noted that California lists cancer as a work-related disease for firefighters and provides workers' compensation for it. No other state covers firefighters for work-related cancer.

We can supply a copy of that and all these other studies that have been done by Dr. Bendix.

It has been brought to the attention of the Ontario Professional Fire Fighters Association that there is some additional stress arising out of the demand by employers to push himself or herself to mental fatigue in trying to update his knowledge. In these days, firefighters not only handle fire suppression but are called in to restrain an increasing number of civic disturbances, which leads to breakdown in family relationships at home.

Firefighters and policemen are the most prone to psychological shock. They are dealing with life and death situations and must learn to overcome the natural impulse to avoid trouble.

Before we go further, I would like to refer to some of the literature we have been supplied with. One item is called "The Unseen Hazard: Stress on the Job," and reads as follows:

"Many of the above illnesses are now compensable (under workers' compensation) in major industrial states, and in several instances there is a presumption of work relatedness in the case of some public employees, i.e. firefighters and police officers. This means that after so many years of service certain illnesses (e.g. heart attacks) are presumed by law to be work related and therefore compensable."

"Physiological Profile of Professional Fire Fighters," by P. W. R. Lemon, is an article from the Journal of Occupational Medicine, May 5, 1977. I will not read it all because it is quite lengthy. We can supply you with all this information.

There is another article, "Stress and the Fire Fighter," by David T. McCarty of the Fort Worth Fire Department, Texas, in the April 1975 issue of Fire Command!

The biggest problems we are faced are when we are called to public disturbances. To give you an example of what happens--to the best of my knowledge we have not been faced with this situation in Canada but in the United States, in the Watts

incident and in Miami, Florida, there were people setting fires in the apartment buildings in the ghettos. They would set a fire in one corner, cut a hole in the floor and lay a rug over the hole. Consequently, when the firefighter went in to put out the fire, he would go through the floor.

Washington, DC, has a policy whereby firefighters do not take the same route to a fire in the same location more than once. The reason is that people, unfortunately, because of the situation in the States--thank God it is not here yet, but it could be--take abrasive actions against firefighters. On inhalator calls during the day until sunset they have three men on the rig. After sunset they have five men on the rig. The other two men watch the rooftops to make sure no one shoots at them or throws garbage cans at them or anything along that line.

They have had incidents in New York City in the ghettos where the firefighters were using aluminum ladders. They were called to a fire set on the top floor. In all the confusion--you have to appreciate the situation in some cases where the firefighters are actually pushing the civilians away in order to try to get into these places--people were wrapping wires around the aluminum ladders and plugging them in. Consequently, the firefighters were being electrocuted as they climbed the ladders.

There were other incidents, for instance, where a fire would be set up on the third floor and every fourth stair would be removed. Of course, when the air is thick with smoke, you cannot see this. These are some of the problems we are now facing. As I said, thank goodness it has not come here yet, but it could come here. This is part of the stress, the psychological problem firefighters are facing now. It is no longer a matter of simply going to a fire and putting it out; you have to be able to protect yourself at all times.

I have an article here entitled Firefighter Burnout, by Anne-Marie Lawrence. I can give you a copy:

"Firefighters command a special respect in our society. They are the macho heroes in helmets who speed through the streets on their red chariots to stop death and destruction. They are what small children dream to grow up to be and, for that reason, society's respect is tinged by the suspicion that firefighters are acting out a childhood fantasy...."

"Despite the fact that firefighters are frequently exposed to the possibility of accidental death, and that they start their careers more physically fit than most of the general population, more firefighters die from heart attacks than from any other cause.

"And, although firemen start out with a lower heart attack rate than the general population, by the time they reach 45 the rate is significantly higher than it is for other men their age. For firefighters in the age group from 55 to 59 the rate is nearly twice that of men in all occupations.

"Stress, both emotional and physical, is daily fare to a firefighter. In one day a firefighter can move from a routine drill to the rescue of a screaming child in a house engulfed in



flames. He may have to cut free a decapitated victim of a highway accident and then go home and try to figure out why the furnace doesn't work...."

"Bud Kellett, the director of the academy, feels that burnout is a real problem for some firefighters. As he points out, 'During the first five minutes of an emergency call, a firefighter exerts more pressure on his nervous system than a blue collar worker does in a month.'

"Dr. Fred Van Fleet, the program director of psychological services at the Justice Institute, agrees with Bud Kellett and adds, 'When the alarm rings in a station, there is a maximal adrenalin response in each firefighter, and it can't be switched off even when it is a false alarm.'

"Although adrenalin allows the body to cope with crises, Van Fleet says, 'The human body is not equipped to deal with emergencies every day.' But every working day is an emergency for a firefighter. Van Fleet also points out that firefighters face extreme environmental hazards, such as smoke and toxic fumes, in the many emergency situations they handle.

"Firefighting has traditionally been an exclusively male occupation with a macho image. Peer pressure to be a 'man's man' is strong, making it difficult or impossible to reveal inner feelings about disturbing incidents on the job. An emotional firefighter can be considered weak or neurotic by his peers. The alternative is to deny these emotions.

"Denial of emotions can lead to stress and burnout. A burned-out firefighter places not only himself, but also his colleagues and the people he is supposed to assist, in increased danger. Therefore, it is very important to recognize stress and identify potential burnout. Van Fleet believes that captains and chiefs should be trained in stress identification with a view to effective intervention at the firehall level.

"Training a firefighter is very costly, and an experienced firefighter is valuable. So apart from dealing with the human, responding to stress signals can prevent a valuable employee from quitting or being fired."

11:40 a.m.

The human body being what it is, the usual reaction is to run away from danger, but unfortunately firefighters do not have that option. They have to put their life and limbs on the line for people and for property. They are not really trying to be macho, do not get me wrong. You can say they do not have to keep that job, but I feel that is a poor attitude to take. If everybody had that attitude, a lot of us would not be working anywhere.

I think there is a stress and a strain, and we have many articles here on psychological programs that would cover that. Assessing the Psychological Needs of a Firefighter is another. As I said, we are fighting for time. Part 2 is Psychological Stress in Firefighters. This is a two-part series. To read part of it



does not give a true picture of what we are actually trying to get across at this time.

The only other thing we are a little concerned about at this time is Bill 101. Maybe the honourable members could explain to us a couple of items we are a little concerned about. One is with regard to failed claims where the widow or the remaining spouse will receive X number of dollars. I believe the break-even point is \$40,000. The way we understand this and interpret it is that if I happen to pass away now and it is proved to be job-related, my wife will get \$40,000 plus, if she is under 40, X number of dollars, \$1,000 a year, and if she is over 40, \$1,000 a year less. Is this true? Does any member of the board know if this is the way it is interpreted?

Mr. Chairman: I believe that is the way it is.

Mr. Sweeney: It is also compensated by a raise in the percentage of income.

Mr. Beattie: So she would just get this here lump sum plus the benefits.

Mr. Sweeney: As the lump sum goes down, the percentage of income goes up.

Mr. Beattie: I see.

Mr. Sweeney: As the lump sum goes up, the percentage of income goes down. They are constantly balancing each other. If you get more lump-sum money, you get less monthly income. If you get less lump-sum money, you get more monthly income. They are compensating.

Mr. Lupusella: With great respect, Mr. Chairman, it appears that previous deputations have been showing the opposite. I do not think we have a clear mathematical formula of how much people would get.

Mr. Chairman: Perhaps Mr. Cain from the compensation board can help explain it. Have you finished with your formal presentation?

Mr. Beattie: It is just a matter of summing up, sir, just a recap; that would be all.

Mr. Chairman: I do not want to start getting too much dialogue until we have everything. Would you like to finish reading that into the record and then we can answer the question?

Mr. Beattie: In recapping and summing up before we finish with this short brief, there are six items we would like to bring to your attention again.

(a) The WCB to establish a fund or insurance plan to pay widows and/or orphans the same salary the firefighter was earning prior to his decease;

(b) Pay full salary to firefighters who are accident victims;

(c) Presumptive clause to the effect that heart and lung disorders are job-related to firefighters;

(d) Carcinoma among firefighters to be job-related.

(e) Psychological stress among firefighters to be studied.

Sections (c), (d) and (e) have already been forwarded to the occupational health program being conducted at McMaster University in Hamilton. Dr. Muir is heading the research project, cosponsored by the Ministry of Labour and the Ontario Professional Fire Fighters Association.

To enlighten you a little further on that, I have a meeting again tomorrow with McMaster, with Dr. Ted Haines and Dr. Murray Laurence, who are setting up the program.

To give you a quick coverage of what has happened here, we have picked out what we call five target areas. We picked out Hamilton, London, Windsor, Ottawa and Timmins as the five target areas to run these studies. The reason for this was we put Hamilton and Windsor as industrial areas, London and Ottawa basically as commercial areas, and we used Timmins as a northern area because we did not want to get into Sault Ste. Marie and Sudbury because we figured there may be bigger problems with regard to the mining situation there and we do not want to cloud that issue. That is why we picked those five areas.

We are hoping to have in the neighbourhood of 2,100 firefighters in the study. We have to meet tomorrow. It is a matter of drafting the questionnaire, and they will be using a breathalyser test. We hope that one way or the other we will find out for sure whether firefighters are more susceptible to heart and lung problems than the general public.

In closing, we trust that the standing committee on resources development will give our request consideration.

Mr. Chairman: Mr. Cain, perhaps you would like to help enlighten us.

Mr. Cain: As to a surviving spouse, under Bill 101 the benefits awarded are based on the surviving spouse's age. If the spouse is 40 years old at the time of the death of the worker, that spouse will receive a \$40,000 lump sum. For every year the surviving spouse is older than 40, that spouse will receive \$1,000 less than \$40,000, up to the point of age 60 when the spouse would only receive a \$20,000 lump sum. For every year the spouse is younger than 40, there is an increase in the \$40,000 by \$1,000, down to the age of 20 when the spouse would receive a \$60,000 lump sum.

As to continuing benefits, if there are children under the age of 19, the spouse will receive 90 per cent of the net average earnings of the worker at the time of the worker's death, whatever the age of the spouse. If there are no surviving children, the

spouse will receive a percentage of the net average earnings, but if it is less than 90 per cent. For example, a spouse of 40 years of age will, for the remainder of that surviving spouse's life, receive 40 per cent of the net average earnings of the injured worker at the time of death. At the age of 50 it goes up. Therefore, the spouse will receive 50 per cent. It is up to a maximum of a 60 per cent pension, 60 per cent of net average earnings at the age of 60.

For the spouse who is younger than 40, the percentage paid to that spouse is one per cent less for each year the spouse is less than 40, down to age 20. At that point they would receive 20 per cent of the net average earnings of the deceased worker for the rest of their lives, and that pension continues whether they remarry or cohabit.

Mr. Lupusella: I think the association wants to know whether the \$40,000 lump sum is a fixed lump sum, or is co-ordinated or subco-ordinated by other factors. Is the \$40,000 fixed lump sum based on the \$31,000 ceiling if the worker makes a \$30,000 ceiling?

Mr. Cain: According to clause 36(1)(a) under section 9 of the bill, the lump sum that is awarded, whatever the amount depending on the age of the surviving spouse, is a fixed amount of money. It has nothing to do with the earnings of the deceased worker at the time of death. That is a specific amount of money.

Mr. Lupusella: In other words, to be clearer, if the deceased worker used to make \$20,000, the \$40,000 fixed amount lump sum will be implemented.

Mr. Cain: For a 40-year-old surviving spouse.

Mr. Beattie: In other words, I should dump my 46-year-old wife and get a 27-year-old wife because she will get a larger lump sum.

Mr. Sweeney: If you have no children, she will get a smaller pension.

Mr. Cain: She will get a greater lifetime pension because she is over 40. She would get 46 per cent of your net average earnings for the remainder of her life.

11:50 a.m.

Mr. Sweeney: It still boils down to the fact that if there are no children, the older she is, the more pension she gets, but the less lump sum. The younger she is, the less pension she gets, but the more lump sum. As Mr. Cain points out, if there are children under 19, that 90 per cent pension remains, regardless of age, until the last child is 19.

Mr. Beattie: Thank you. As I said, this is one thing we were trying to get clear.

Perhaps there is another thing you could answer. We may seem very dumb here this morning, but we do not understand this 90 per cent factor. Of course, most of you realize that most municipalities fall under schedule 2 of the act. Consequently, we usually get our normal paycheque. Under this 90 per cent factor, if you want to call it that, I understand we will be paying income tax, unemployment insurance premiums and Canada pension plan. Will we pay that on the 90 per cent?

Mr. Sweeney: No, it is already deducted in order to arrive at the net figure.

Mr. Beattie: That is right.

Mr. Cain: That is not the purpose. In order to arrive at 90 per cent of net, what is being proposed under section 43 of the proposed bill is that one will take the average earnings of the injured worker, be it an hourly rate, a daily rate, whatever, and that is classed as the gross earnings. Using tax tables and depending on the tax status of the individual worker--single, with spouse, and so forth--from the gross earnings will be deducted the probable income tax payable, the probable Canada pension plan payable, the probable unemployment insurance premiums payable. They will be deducted from the gross earnings. That gives the Workers' Compensation Board net earnings. Then it is 90 per cent of net.

In deducting those three factors, one has to know the injured worker's tax status, single, or with spouse, spouse and children and so forth.

This is not suggesting you have or have not to pay those particular items through your employment. Certainly, compensation is still not taxable, as far as we know, in schedule 2. There has been some problem with the federal government, but I think it may be worked out. I am not certain.

Mr. Beattie: In other words, when we get our T-4 slip at the end of the year, as we do now, we just get a straight, ordinary T-4 slip for total wages, for example, \$32,000 a year. That would be our gross. When we have been off work on WCB payments for temporary disabilities, will the board send us the amount it has paid us on that 90 per cent?

Mr. Cain: Your payments from the compensation board would be deducted because they are not taxable.

Mr. Beattie: Okay, fine. Thank you.

Mr. Lupusella: Mr. Chairman, I do not want to get into previous statements that were made by the other association that appeared before us on Tuesday. I think your presentation, along with the other, was an excellent presentation, combined with a lot of research which I am sure the board and the Minister of Labour (Mr. Ramsay) has, unless I am wrong. It would be useful if all the research material the two associations have was to be forwarded to the Minister of Labour and to the Workers' Compensation Board.



One thing that is becoming evident as a result of the presentation of the two associations of firefighters is that their complaints about loopholes within the act which at the present time and in the future will not take into consideration their specific problems are not very different from the complaints that have been raised by all the injured workers who appeared before our committee.

I am really puzzled, Mr. Chairman, and I am very truthful in stating that there is no reason whatsoever that the board, within the framework of the present act, should not consider all the problems that have been raised by the two firefighters' associations.

I want to be more clear. You want more recognition as a result of the problems you face, but even within the framework of the act the board is failing to implement the present act to take into consideration your problems. I want to go back to the principle I enunciated previously. All the factors that have been brought to our attention should be covered under the principle of disablement. If you are able to demonstrate that the problems are work-related, all the problems raised by the association should be considered.

I have two questions, the first one for the association. In your personal experience of dealing with appeals presented before the board, what kind of a response did you get from the board in the decision-making process of the appeal system when you made all these points in defence of your members? Did you lose or win appeals? What kind of treatment did you get from the board?

Mr. Beattie: I found I was received very well, although we did not win them all. In some cases, the adjudicators had the wrong attitude when we got there as far as we were concerned. It seemed they had already drawn their conclusions about the decisions. I was very disappointed in the last case I had. I went ahead and obtained a doctor's information on the fellow and the adjudicator seemed to ignore it altogether, as if he had already made up his mind. Generally, the reception we receive is excellent.

Mr. McPherson also presents claims before the board. How do you find them, Paul?

Mr. McPherson: I agree with Mr. Beattie. By and large, claims have been very well received. The major problem I see in presenting claims and going before boards of appeal to represent firefighters is that sometimes the board does not have the proper background knowledge of what a firefighter does for a living.

We live in a plastic world and are surrounded by plastic. I had to take a polyvinyl chloride case with which Mr. Beattie assisted me before the board. It happened in a seven-storey, high-rise building. A firefighter took off his mask to give a Portuguese woman air as they were going down seven floors. He sustained 30 per cent damage to his left lung and his claim was turned down. It shatters my imagination to have to go before the board and explain exactly what this man does for a living.

That was a landmark case. Since then we have educated the board through our appeals. They now ask us what was burning, what the fire load in the basement was, what the exposure of the firefighter was. As David mentioned, it is getting much better, but it is a battle. Every single heart and lung case we take to the board is a battle because we do not have presumptive heart and lung legislation in this province.

Mr. Lupusella: Let me get to the other point. It appears your main complaint is that the board is not quite sensitive or not well educated to the problems firefighters face in their daily operations. All injured workers are in the same boat when they have to present cases before the board.

There is something I do not understand. Do you need special clauses within the act to take your problems into consideration, or do you think the present act, together with the bureaucratic approach and the question of lack of awareness of your problems, is the main problem? Do you need extra status within the act or do you think the act already takes your problems into consideration?

Mr. McPherson: We need a presumptive clause in the act because of the carcinogens we are exposed to from day to day and the long-lasting effects these carcinogens have on firefighters' hearts and lungs. The studies are ongoing and innumerable. David has shown you only a couple of books. The effects are drastic on firefighters in the United States and Canada who have cancer. When they go back 40 years into the death records, they find firefighters died of heart or lung diseases all the way down the line. In the genetic approach to this, children of firefighters are sustaining different types of cancer. The effects are long-lasting.

12 noon

Dr. Selina Bendix talked to us in Miami. There were about 1,000 firefighters in the room, and 400 of them got up halfway through her session and left. The reason was they realized that at some time in their lives as firefighters they were exposed to this carcinogen that might cause them to have cancer down the road.

Mr. Lupusella: Let me get to another question. Do you think the provision currently contained in Bill 101, which is the industrial disease standards panel, will cover your problems, or do you think that you need something extra?

Mr. McPherson: Definitely.

Mr. Lupusella: Something extra.

Mr. McPherson: We very definitely need some type of presumptive clause.

Mr. Beattie: We need one that is separate, just for firefighters, because as Mr. McPherson said, we are a unique group. There are not many people who work the shifts we work, and we do not all work the same schedule. Each department works individually. Hamilton works a different schedule than London.

Windsor works a 48-hour shift--24 hours on, two days off, I believe it is--and then another 24 hours on. We are unique in that situation alone.

We run into all kinds of problems that the Workers' Compensation Board itself does not quite understand. A man is off for five days. On the sixth day he is supposed to return to work, but he books off. The boards says, "Why did you take so long to report?" The officer he was dealing with does not come back until the five days are up again, so if he turns around and tells the officer who is on duty at the time, that officer says: "I do not know anything about that. I was not at that fire with you." Consequently, there is a delay in reporting.

Mr. Lupusella: The reason I am raising all these questions, and I think you will appreciate it, is that workers dying of asbestosis, such as the workers who have been employed for so many years at the Manville Canada plant and so on, are in the same type of group you are in. We have been faced with a stonewall position by the board in rejecting their claims. Something is wrong with the board or something is wrong with the law, and that is what I am trying to clarify.

The last question is related to that. Do we have specific policies affecting firefighters at the board level?

Mr. Cain: As I said when the last firefighters' association was before the committee, the board does not have specific policies relating to specific heart problems and lung problems with firefighters, but when the previous group was before the committee the minister directed that the board provide him with any information we have on firefighters' concerns and that we also look at the material--that would now include the material provided by this association--and report back to him as to whether anything can be done now, as opposed simply to waiting. As you know, in Bill 101 there is a panel that would obviously look into it as well.

Mr. Lupusella: I am very surprised and I am still puzzled that the present corporate board has spent so much time setting up policies and we do not have policies covering firefighters. There are 70 years of history of the corporate board at Front Street and 2 Bloor Street East. What are they doing? I really do not understand their role. That is why I am taking the position that the corporate board should really be abolished. Up to now, I do not think they have showed us leading positions taking into consideration problems affecting the workers of Ontario. It is 70 years. Do you think the new corporate board will do something about it? I am quite suspicious about its role.

Mr. Sweeney: There is just one question, Mr. Chairman, and it--

Mr. Chairman: If I may just interrupt, it looks as if we are not under as much time pressure as we thought because the third witness is not here yet.

Mr. Lupusella: Then I can ask more questions.



Mr. Chairman: I am sorry I said that.

Mr. Sweeney: I have a problem and I really do not know how to deal with it. Perhaps you can help me. I have no doubt whatsoever that the information you are bringing before me, the studies that have been done and the statistics that are available, clearly indicate that the rate of death and disablement from heart attacks and lung disease among firemen is higher than the average in the population. I do not quarrel with that whatsoever.

Where I have a problem in terms of your presumptive clause proposal, and the other group that was before us made a very good case as well, is that in the general population the two main causes of death are the same things: heart disease and lung disease. While you could take firefighters as a group and make your case, and you have made it very effectively, my difficulty is that any individual situation that comes before the board does not deal with a group, it deals with an individual firefighter. In the present population of Ontario, Canada or North America, the chance of anyone coming down with heart disease or lung disease is extremely high. The relationship or nonrelationship with the work place is difficult to prove at the best of times.

That is why I have a difficulty with the presumptive clause. If those two particular diseases were not the very same two that exist in the entire population in terms of death rate and disablement, then I could deal with it. Coincidentally, ironically, or however we want to put it, they happen to be the very same two.

How do we deal with that legislatively? When you say "presumptive," the chance of anyone dying with heart disease or lung disease is extremely high in our society compared to any other cause of death, as it is with firefighters. That is where I am really caught up. I do not know how to deal with the situation.

I can certainly see that when a firefighter is disabled or does die from one of these two causes, an exceptionally careful analysis has to be presumed and must take place. I do not see how you can just automatically presume it, because the chances in the general population would be that he could die from those very two same diseases.

Mr. Beattie: I will give you an example along the same lines. We presumed that this man had a heart attack and died from it because it was job related. We had a gentleman in the Hamilton Fire Department who never had any heart trouble prior to this incident but he ended up with a heart attack. He went down to the board on the Friday and was going to receive a 10 per cent disability for a heart condition. I would presume that he had a heart condition that was job related.

Unfortunately, on Tuesday he died. The board said there was no connection. He died of a heart attack. How can you do anything else but presume that it was job related if the board had accepted it in the first place?



I realize that under the board's guidelines it does say that it aggravates. "An aggravation of a pre-existing condition" is their terminology in that part. Still, on the Friday the board had said, "Yes, you do have a heart condition; it is 10 per cent." This gentleman had the heart attack and he died on the Tuesday and his widow gets nothing. We appealed the claim and they said it was not job related.

I just cannot understand that and I do not think the widow could. That is one of the reasons we need this presumptive clause. That should clear that up.

Mr. Sweeney: Yes, in that individual case, knowing just what you have told me, I would have to tend to agree with you.

Mr. Beattie: We had a man who stepped off the back of an apparatus and dropped dead. I would presume he was fine until he got to the scene of the fire, but they would not accept that claim.

We had a man at a fire down in Belleville who was pulling hose. He was inside the building. He came out and dropped dead. He was fine before he got to the alarm, but the board said no, it was not job related.

These are only three examples. This is why we need this presumptive clause. This is one of the reasons. We hope this study at McMaster covering the whole province will help justify it, because the study groups we are going to use as a comparison with firefighters are police and the military service.

12:10 p.m.

We picked on the military service because they are basically the same type we are. Firefighters are usually hired in their early 20s and are usually in pretty good shape all the time that they are on the job. They are participating in different things and most departments now have exercise programs set up. This should help justify it. These are two of the groups, the police and the military service, and we are going to use them as a study group with the firefighters.

Mr. McPherson: I would like to add one example I have been involved in recently in the city of Woodstock. The department has about 35 to 40 paid professional firefighters, and three men inside of two weeks had heart attacks. One died. They all attended the same fire. The one who died was the top athlete in the department. He was 42 years of age and left two children. He died four hours after the fire, but he was at home when he died and the board turned down the claim.

This is what we run into. This is a very small department compared to the one--

Mr. Sweeney: Surely you are also aware of the fact that in the general population the same kind of event takes place with regularity. Take the classic example of just a couple of weeks ago

when Fixx, the international runner who introduced everyone to jogging, ended up keeling over while he was doing it.

Mr. McPherson: You are very correct, sir, in your assumption.

Mr. Sweeney: That is the dilemma I find myself in as a legislator. I do not know how to grab hold of that. I know the very same thing you describe happens to many other people who are not firefighters.

Mr. McPherson: I think what the government body has to understand is what a firefighter does for a living. I agree with you that these things can happen to anyone. The stresses and strains we face today are enormous.

The point I would like to make is that a firefighter comes to work and an alarm comes in and his heartbeat rate goes from 78 to 151 a minute when he has not even got to the fire yet. He does this day in and day out, and then he is exposed to noxious gases. The number of times he is exposed to things that doctors have written about as causing us to have problems is probably 80 to 90 per cent more than the general public.

Maybe I am being facetious because I am a firefighter, but I know for a fact when you get that alarm in the middle of the night, it is sometimes very difficult to put your heart back in your body. A marathon runner peaks at 191 heartbeats a minute after 26 miles. Some firefighters are at 181 and they have not to the fire yet, especially if the message comes through that there are children trapped on top floors or if they have to go up 26 floors to fight a high-rise fire.

What I am saying, sir, is they are exposed to this day in and day out. Then they have to wind down and put their hearts back in their bodies again and get ready to do it all over again. They cannot do this day in and day out. The doctors have told us that this (inaudible) response is adrenalin to the system. They cannot charge the system day in and day out with this adrenalin without it having a detrimental effect to their bodies, unless they are fine athletes, finely tuned day in and day out.

The chances of firefighters having these problems are twice or three times greater than the chances of the average member of the public. I do not think I am exaggerating when I say that, because they are exposed to all this day in and day out.

Mr. Lupusella: Is benefit of doubt applied in cases you win or is benefit of doubt not specifically implemented?

Mr. McPherson: Benefit of doubt is not specifically implemented. You have to prove every single case.

Mr. Lupusella: In your specific category, benefit of doubt should have a high priority.

Mr. McPherson: Very definitely so, sir.

Mr. Hennessy: I want to commend you on your fine brief. I think it is excellent.

I have been acquainted with a fire department, as a member of council for many years in Thunder Bay. Knowing some of the problems, I think fire departments have changed a great deal from what they were years ago. I agree with you that younger people may be in better condition now because there are more programs than there were before, when they used to sit around and waste time and wait to go home. Now they are out practising and different things like that.

Where do policemen come in relation to you people? They also have a hazardous job. The personal stress the fire department people have does put a stress on the family too, I imagine.

Mr. McPherson: Mr. Hennessy, if I may, the stress on a police officer is quite a bit different. They have an awful lot of psychological stress as well. The firefighter wears approximately 45 pounds of equipment on his back when he fights a fire. He is exposed to tremendous heat, gases and so forth.

The stresses are somewhat different in that the police officer is exposed to psychological stress in domestic disputes--we do not get into that too much--but the stress we are exposed to is also psychological when we have to go to car accidents, as David mentioned, where we have to be involved in extrication. There is a lot of death and misery.

The police officer has this as well, but coupled with that, when the firefighter leaves the hall he has all these other problems on his mind and for 25 or 30 minutes at the fire--the average knockdown of a house fire is probably 24 to 30 minutes--he works as hard in that time as one works in one's whole natural life. We often say in the fire service that with a large fire like that, he earns his money in one year.

The stresses are there, but those of police officers and firefighters are different. We do get the psychological. They get more of the psychological. We get the psychological and the physical.

Mr. Hennessy: Do you think your job is one of the few that fits into that category? There are no others?

Mr. McPherson: I would say yes. I am glad you said you are from Thunder Bay. I just returned from Thunder Bay--

Mr. Hennessy: Any snow there?

Mr. McPherson: No. There was no snow. I went before a board on an appeal for a firefighter who was blown off the top of a 90-foot grain elevator. The young man was severely burned. I appeared before the board for this young man and we were able to get him some kind of a pension.

In Thunder Bay, the problems are different. They do not have as many high-rises as London, but they have grain elevators that

are technically bombs waiting to explode, filled with grain dust. What this young man went through both psychologically and physically was beyond your wildest imagination. The man is back to work riding the back of an engine in Thunder Bay in the middle of winter with hands that are still burned and cracked and bleeding, in gloves, but he is still back to work.

The problems are different in different areas of the province, but basically firefighters do the same job. The pressures are a little different from those of police officers.

Mr. Hennessy: This is the final question. You are looking for some special legislation in view of the hardships, the risks of involvements in different fires; you are taking your life in your hands with every fire you go to. You do not know what it is going to be.

Mr. McPherson: That is right. When a firefighter is injured, we have to get into our research material and consult the doctors who work with firefighters every time out. We are looking for something so that the board would cover us and say this man has an occupation that is different from the gentleman who was before us, the construction worker; this firefighter is involved with these certain situations. There has to be something in the act presumptive-wise, to cover us. It seems to be a circle every time we prepare.

I just finished a heart case for a platoon chief. He picked up a piece of two and a half inch hose at a fire. The man is ready for pension but he is in great shape. He hardly lost a day's work in his life. The board said he had a heart attack, and recognized for seven days when he was in the hospital that he had had a heart attack.

After that they dropped him like a hot potato. He had to go on pension. He could not return as a firefighting platoon chief. He had about another year to go before his pension.

My point is that the board said he had a heart attack. They said, "Seven days in the hospital; he had a heart attack." After that, forget it. That is what we have to do. Every case has to be treated individually and we always have to plead our case. We need some strength in the act to protect our firefighters.

Mr. Hennessy: I look favourably on your request.

Mr. Sweeney: Could I intervene and ask you to take a look at subsection 122(9) of the existing act? It is on page 60 of my copy of the act. It is a presumptive clause. It is April 1983.

Mr. Beattie: I do not have it. Mr. Hothersall has it.

Mr. Sweeney: Do you have that one? Okay. It is on page 60, subsection 9, "presumption as to disease being due to the nature of employment."

Mr. Beattie: Right.



12:20 p.m.

Mr. Sweeney: If you will then turn over the page there is a schedule 3. You will notice they give a description of the disease and the process the worker was involved in. If you can make that connection, then the presumption clause in subsection 9 takes effect.

Mr. Beattie: That is right.

Mr. Sweeney: Could you have your people take a look at what you are suggesting to us and see whether that could be made to--

Mr. Beattie: I used it at a hearing before the board and it said there was no mention of firefighters being covered there.

Mr. Sweeney: I realize it is not there, but do you have a suggestion as to how it could be? That is the point I am asking. What you are asking is that there should be a presumptive clause.

Mr. Beattie: The thing we are afraid of is that, if we turn around and say, "Yes, there could be," what would we put it under? We did not exactly know--is it carbon monoxide poisoning only?

If the man has a heart attack and the doctor says that it was something other than carbon monoxide, the board's attitude is: "You are not covered under carbon monoxide. You are not covered under carbon dioxide." Unless it is spelled out under schedule 3 as to exactly what it was, that is what happens. The board would take the attitude, "You are not covered because it does not mention that you are covered."

Mr. Sweeney: What I am recommending is, would you propose to us a way in which it could be spelled out?

Mr. Beattie: We made the proposal a year ago when we made our presentation. Do you have that presumptive clause?

Mr. Sweeney: If you can give me the reference I will look back in my old file, because I was on this committee then.

Mr. Beattie: I tried that at a hearing. I said that the process involving the evolution of carbon monoxide, what actually were the--the problem was that burning tires were causing carbon monoxide. They said, "No, you are not in the manufacturing process." That was the attitude the adjudicator took.

How do you beat him? How do you explain to him that carbon monoxide is carbon monoxide? We may be exposed to that at that time. In an hour when he gets back he could be exposed to chlorine. Chlorine is not covered. We are not covered under chlorine. I still have a case before the board. I had a hearing a year ago April and it has not made a decision on it yet.

Mr. Sweeney: What was the reference you were going to give me?

Mr. Beattie: This is the presumptive clause that we put in.

Mr. Sweeney: What was the date of that submission?

Mr. Beattie: I believe the first one was in May 1983. Then we were asked to remove ourselves because there was a leak in the budget at that time.

Mr. Hennessy: I would just like to say that if you have any requests of that nature, why not forward them to the chairman so that all members of the committee get the request?

Mr. Chairman: Perhaps we could have this reread into the record.

Mr. Beattie: I can read this out for you if you want, Mr. Sweeney.

Mr. Sweeney: Yes, please.

Mr. Beattie: "Any disease or infirmity of the heart or lung which develops during the period of employment in a classified fire service in the province of Ontario shall be classified as a disease or infirmity connected with the employment.

"The employee affected or his survivor shall be entitled to all the rights and benefits to which one suffering an occupational disease is entitled in service connected in the line of duty, regardless of whether the firefighter is on duty at the time he is stricken with the disease or infirmity. Such disease or infirmity shall be presumed prima facie to have developed during the employment whenever the same is manifested at any time after the first five years of employment."

We feel that would cover not only heart and lung, but also carcinogens and everything that we are exposed to. To try to point out what you could put under schedule 3, you would have to name everything going--sulphur dioxide, everything--because once it is broken down--

Mr. Sweeney: Yes. I understand your problem.

Mr. Beattie: --the board's attitude would be: "It is laid out there. There is the act. We have to follow what it says in the act."

Mr. Riddell: I think most of us on the committee share your concerns and are prepared to support your request for protection with a presumptive clause in the legislation. We will probably get a better appreciation of the reason that the minister and his staff did not give this consideration when we get into clause-by-clause study in September.

I suppose a case could also be made for the person who is working on the assembly line and the stress factors connected with that. It depends on the individual. If I had to do some of the work that some of the labourers do, one job day after day on the

assembly line, I would be fast inviting Alzheimer's disease. That would be the greatest stress to me that I could ever face, having to go in and work on an assembly line doing the same thing day after day.

This is one of the things the minister has to grapple with. Sure, you people are working in a hazardous occupation, but as far as some of these job-related diseases such as stress are concerned, I can see where that pertains to people who are not necessarily working in the same hazardous occupation but who are working at a job which I consider to be extremely stressful.

That is more by way of a comment, but I think you can understand the difficulties the minister and his staff have in putting in presumptive clauses or trying to state which are job-related diseases and things such as this. It is no small task, and I am not by any means supporting the ministry.

Mr. Chairman: He is never accused of that.

Mr. Riddell: Did I understand you to say that studies have revealed that diseases which are job related as far as firefighters are concerned eventually became genetic diseases?

Mr. Beattie: That is right.

Mr. Riddell: They were handed down to the offspring? Through what? Mutations?

Mr. McPherson: Mutation, yes. Dr. Selina Bendix has done considerable research in this field. She is from San Francisco and she is world reknowned in her field.

Mr. Riddell: So if a fireman inhaled a substance that eventually caused lung cancer, there is a very great chance of his or her offspring also developing lung cancer at a very early age?

Mr. McPherson: Yes. That is why 400 or 500 firefighters got up and left that presentation in Miami when she mentioned that fact.

Mr. Beattie: It is the same when you go to the board or any doctor and they take the research. They check the family history of a person who has had a cardiac problem. "Has your brother had a cardiac problem? Has your mother or your father?" It is basically the same thing.

We have to concede it is as hard as heck, and we are the first to admit it, to try to pinpoint a heart problem when the guy smokes a pack of cigarettes a day. This is our biggest problem. We can appreciate the position the board is in, too, but there are cases.

I never smoked a day in my life, I do not drink, and I had a heart attack. My cardiologist says: "Yes, definitely. You have been on the job 29 years. It has to be a factor."

Mr. Riddell: I do not question that.

Mr. Beattie: The thing is, you just cannot go to the board and say, "Yes, that is his recommendation."

Mr. Chairman: Thank you, gentlemen. Before you leave, there is one concern we have. You provided us with a list of names of firemen who have apparently died in service. Do you have the permission of the families to use those names?

Mr. Beattie: Yes.

Mr. Chairman: The list does go into the archives of the Legislature. If you do not have that permission, we would have to disguise the names in some way.

Mr. Beattie: Yes, most of these had gone through the appeal system and these are all the rejected claims.

Mr. McPherson: It is interesting that the age categories coincide with probably 90 per cent of the studies that were done: ages 47 to 57.

Mr. Chairman: The point I am making is if we can use this as an exhibit.

Mr. Beattie: Yes.

Mr. Chairman: Unless you had permission from the survivors, it could be a problem. In the appeal system, of course, it is confidential, but here it is public.

Mr. Beattie: Right.

Mr. Chairman: If you have that permission, that is fine.

Mr. Beattie: We have no problem with that.

Mr. Chairman: Thank you so much for appearing before us.

Mr. Beattie: Thank you very much.

The committee recessed at 12:29 p.m.





CADAN

Y013

-578

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

THURSDAY, AUGUST 2, 1984

Afternoon sitting



## STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Barlow, W. W. (Cambridge PC)  
VICE-CHAIRMAN: Villeneuve, N. (Stormont, Dundas and Glengarry PC)  
Havrot, E. M. (Timiskaming PC)  
Lane, J. G. (Algoma-Manitoulin PC)  
Laughren, F. (Nickel Belt NDP)  
Lupusella, A. (Dovercourt NDP)  
Mancini, R. (Essex South L)  
McNeil, R. K. (Elgin PC)  
Riddell, J. K. (Huron-Middlesex L)  
Sweeney, J. (Kitchener-Wilmot L)  
Watson, A. N. (Chatham-Kent PC)  
Yakabuski, P. J. (Renfrew South PC)

### Substitution:

Hennessy, M. (Fort William PC) for Mr. Lane

### Also taking part:

Ramsay, Hon. R. H., Minister of Labour (Sault Ste. Marie PC)

Clerk: Arnott, D.

### From the Ministry of Labour:

Cain, D., Director, Claims Review Branch, Workers' Compensation Board

### Witnesses:

#### From the Ontario Federation of Labour:

Guillet, S., Member, Occupational Health and Safety Committee;  
Occupational Health and Safety Co-ordinator, District 6, United Steelworkers of America

Meagher, T., Secretary-Treasurer

Pilkey, C., President

Waddell, E., Director, Occupational Health and Safety

#### From the Canadian United Auto Workers Council, Workers' Compensation Board Committee:

Crocker, J., Benefit Representative, Local 1520, St. Thomas  
Harrison, L., International Representative, Regional Office, Toronto

Kyle, H., President, Local 252, Toronto

Ladd, L., Service Representative, Local 222, Oshawa

Lebert, R., Financial Secretary, Local 444, Windsor

Longueay, R., President, Local 1973, Windsor

Orr, B., Chairman; Financial Secretary, Local 199, St. Catharines

#### From the Standard Steamship Owners Protection & Indemnity Association:

Connidis, K., Counsel; with Wright and McTaggart

Herridge, W. R., Counsel; with Wright and McTaggart

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, August 2, 1984

The committee resumed at 2:06 p.m. in committee room 1.

WORKERS' COMPENSATION AMENDMENT ACT  
(continued)

Resuming consideration of Bill 101, an Act to amend the Workers' Compensation Act.

Mr. Chairman: Will committee members, particularly Mr. Laughren, take their seats.

Mr. Laughren: Why me in particular?

Mr. Chairman: We have three witnesses to appear before us this afternoon. We will try to allow as much time as possible, realizing we do have time constraints. The first witness is the Ontario Federation of Labour. The two names we have on the list are Mr. Pilkey and Mr. Waddell. Would you gentlemen like to introduce yourselves and your delegation and away we go.

ONTARIO FEDERATION OF LABOUR

Mr. Pilkey: Thank you, Mr. Chairman. I want to say to the committee that we do have a written presentation to make. Before I do that, I want to introduce two of my other colleagues. Mr. Ed Waddell, director of occupational health and safety for the Ontario Federation of Labour, will read the document. On my right is Terry Meagher, secretary-treasurer of the Ontario Federation of Labour, and Mr. Simon Guillet, who is a member of the steelworkers union and a member of the occupational health and safety committee of the Ontario Federation of Labour.

I want to thank the committee for the opportunity of making this presentation. We think amendments to and upgrading of the Workers' Compensation Act are very important. We would like to put our position to the committee. Hopefully, many of the proposals we make, if not all of them, will be accepted by the minister.

Mr. Chairman: Before the introductory remarks?

Interjections.

Mr. Chairman: Do you want to proceed then?

Mr. Waddell: Thank you, Mr. Chairman. It is just a brief brief, as you will note. We are not short on thoughts but maybe a little shorter on words.

More than four years ago the Ontario Federation of Labour presented to Professor Weiler a comprehensive document prepared initially for submission to the Minister of Labour and entitled The Workmens' Compensation System in Ontario, a Critical Overview.



We expressed in this document labour's fundamental concerns for workers' health and safety and for the need of a total revision of the system's structure, including the numerous legislative changes required.

It was indeed a critical analysis of the Workers' Compensation Act. This 47-page document obviously did not distract Professor Weiler from his intended course. That became quite clear to us following meetings with him after his appointment and confirmed in his report Reshaping Workers' Compensation in Ontario. As the old saying goes, we did not confuse him with the facts.

The Ontario Federation of Labour, unlike employer organizations, formulates its policies through a democratic process at rank-and-file conventions where resolutions are submitted and debated and where policy statements are rejected or accepted, as the case may be. Such policy adopted becomes our law. We do not jump from one position to another to suit the political situations of the day, nor do we tailor our positions for political expediency.

We will indicate in this submission where we must remain firm on certain amendments as we have done in previous submissions over the past four years and we will indicate where we accept, at least in principle, certain amendments, always with the hope that one day in the not-too-distant future injured workers and their families will be granted the recognition and benefits they so rightfully deserve after contributing so much of themselves, even their lives in many instances, to the industrial growth and corporate wealth of this province.

Before dealing with the specific amendments proposed, we must express our difficulty in responding to this bill when so much has been left either unexplained or to be announced and worked out at a later date.

We must also register our objection to the timing of this bill. It is at such an inappropriate time of the year and allows very little time for proper discussion and response. We urge those who have the authority over such matters to be more co-operative and reasonable in the timing of such important matters. If we are to get the full benefit of a meaningful debate on the issues involved, we must allow time to attend to the physical requirements, otherwise it makes a mockery of the democratic process.

Now, our response to Bill 101. Consistent with our position in previous submissions, we agree with changing the makeup of the corporate board by appointing outside directors. However, we do not agree that the majority should be representative of employers and professionals, etc. It is a workers' compensation board and, as such, at the very least should have equal worker representation.

We are also concerned with the proposal that the external directors be part-time, nor do we believe workers' compensation issues can be dealt with effectively and fairly by quarterly or periodic meetings. The board has to deal with human beings and not with the production of widgets.

We endorse the proposal to establish a new tripartite appeals tribunal and we agree with the labour-management composition of the tribunal. We would add, "and who have experience and demonstrated competence to deal with workers' compensation issues and appeals."

The chairman of the tripartite appeals tribunal should not be an ex officio member of the board of directors. All members of the appeal tribunal must remain independent of the corporate board. There should also be a provision for the tribunal to publish its decisions.

The use of a medical assessor by the appeals tribunal to assist the tribunal regarding medical issues in dispute should certainly be an improvement over the present system. Our experience over the years with board doctors has caused us considerable concern. It is a fact that the denial of many claims was based on and attributed to board doctors having the final word. They did adjudicate claims regardless of contrary opinions expressed. Board doctors and board consultants specifically should be excluded from any proposed medical roster.

The closed-door, secretive procedure of the board when formulating criteria and developing guidelines in the past had convinced labour a number of years ago that a dramatic change was required. Claims were denied to spouses of many deceased workers, for example, due to what we call the numbers game. We therefore support establishing an industrial disease standards panel to review and make recommendations regarding compensation policies and practices for occupational diseases. We anticipate this change to an industrial disease standards panel will help bring justice into the system which heretofore was not evident.

We support the proposal to expand the office of worker advisers. We would also recommend that financing be made available to expand community clinics, legitimate injured worker groups and unions who have demonstrated the willingness and ability to render assistance to the thousands of workers who require counselling in this province. Worker advisers should be independent of the WCB and nominated by the OFL, the organization that represents organized labour in Ontario.

We oppose the creation of an office of employer advisers as proposed. Employers are now appealing and making appearances before adjudicators and appeal panels. We have no evidence that they require further assistance or are denied access to the system. Second, what is proposed would create situations where two advisers would be arguing before the appeal tribunal, one supporting a claimant and the other against the injured worker; two advocates from the same firm on opposite sides in the case before the court.

Labour's policy on full compensation benefits to be based upon 90 per cent of pre-injury net earnings has been made clear on numerous occasions. There is no justifiable reason for penalizing injured workers by paying 90 per cent instead of 100 per cent of net pay. This applies to all sections where 90 per cent is mentioned.

The move to 90 per cent net from 75 per cent gross may benefit some lower-paid workers; however, others will receive less. Nor do we agree with maintaining a ceiling on earnings; a worker when injured and entitled to temporary benefits should not suffer any income loss.

The proposal to extend protection against employment discrimination under the Human Rights Code, 1981 to cover explicitly workers' compensation claimants may result in some improvement. However, the act should be amended to provide for a "no reprisals" clause. Injured workers are not only discriminated against in the hiring process; they are discriminated against by job terminations and from returning to previous employment.

We introduce the next section by expressing our satisfaction that the actual wage loss system has been abandoned in this bill. We understand, however, that the Minister of Labour has not totally given up on this concept and that future, phase 2 legislation may revive white paper style permanent disability compensation. While not wanting to spend time in this response dealing with hypothetical future legislation, we wish to reiterate that labour will continue to reject the actual wage loss model.

As to the current proposals, we believe there are some improvements and some cutbacks. The broadening of the definition of "permanent disability" to include any psychological damage, the removal of Canada pension plan disability benefits automatically preventing pension supplements and the inclusion of an "older worker" clause are small improvements. However, these gains are offset by the lack of an improved rehabilitation section in the bill, by the failure to define "suitable" and "available" and particularly by the introduction of CPP benefits offsetting.

We understand the minister has defended the CPP offset provisions by saying that it would not result in a dollar-for-dollar reduction and that it was limited to "only" certain circumstances. The Ontario Federation of Labour categorically rejects the principle of CPP offsetting, no matter how it is calculated or how limited its scope. Our reasons for this were explained in previous submissions to this committee and to the previous minister. CPP benefits are paid by a federal plan contributed to by workers and should in no way be considered in paying WCB benefits.

Regarding the absence of any vocational rehabilitation provisions, we are perplexed that the heart of a humane, just and cost-efficient compensation system should be ignored. Canadian Union of Public Employees Local 1750, representing Workers' Compensation Board rehab counsellors, among others, has indicated the shocking state of affairs at the WCB rehab department, yet there is nothing in this bill to correct this. The bill continues the practice of making pension supplements available as long as there is co-operation with rehab and unless there is a refusal of suitable and available work, without correcting the major problems in rehab that currently bedevil injured workers.

Another aspect of rehabilitation and supplements that goes unaddressed in the bill is the limited re-employment provisions



outlined in the white paper. Accident employers must bear a responsibility to re-employ workers, wherever possible, who have been injured in their employment.

The Ontario Federation of Labour has, in previous submissions to this committee, taken the position that those workers suffering from permanent partial disability should receive a lifelong pension which recognizes the 24-hour-a-day impact of the disability plus replacing wages lost due to the disability. While Bill 101 does not introduce the Weiler actual wage loss proposal, it also does not correct the long-term problems of the permanently disabled in a just and equitable manner.

**Survivors' benefits:** It is one of the most tragic scandals of the workers' compensation system in Ontario that survivors of occupational deaths are given benefits which place them far below the poverty level. While many of our complaints concern the administration of WCB, the shocking treatment of wives, husbands and children of workers killed by their jobs is a direct responsibility of the legislation.

While Bill 101 proposes a complex system of compensating survivors, which we comment on below, it only deals with those survivors who become eligible after the bill is enacted and does nothing for the thousands of current recipients of survivors' benefits. To finally attempt to recognize the inequity of WCB survivors' benefits, without trying to correct the situation for the victims of that inequity, would be a shocking and shameful injustice. The OFL has long been on record for greatly improved survivors' benefits. Such improvements must apply to all future and current survivors.

With regard to the proposed amendments in Bill 101, the OFL has proposed in the past that a far more straightforward system could have been used; i.e., "spouses should receive the amount equivalent to the deceased worker's rate of full compensation." We stated that in the OFL brief to the standing committee on resources development in September 1982.

2:20 p.m.

While the bill's provisions would dramatically improve benefits to some survivors, particularly those with dependent children, those whose spouses were higher wage earners and those who remarry, we are concerned that the situation of others will only be marginally improved or perhaps made worse.

**Injured workers' day:** The Ontario Federation of Labour supports the concept of an injured workers' day, and affiliates from the OFL joined in a minute's silence at the Canadian Labour Congress convention in Montreal on June 1, 1984, for workers killed on the job.

The Ontario government must recognize that a minute's silence is only a beginning and that, first and foremost, occupational deaths must be prevented and, when they occur, all surviving dependants must be given the dignity of adequate benefits. The provisions of Bill 101 go some way in that regard.



We urge the committee to take that principle all the way, for low-income survivors, single survivors and current survivors.

Mr. Chairman: Thank you very much for that very interesting brief.

Hon. Mr. Ramsay: I do not know where you mentioned it here, but you are talking about the lack of time. Maybe you could just give me some assistance in that respect. How do you feel it should have been handled?

Mr. Waddell: Although this has been in front of us for a long time--I will admit that, because it is quite obvious--there was the time the bill was tabled and the timing of these hearings and this being summertime. When I talk about the democratic process it is not I, sitting in a little cubbyhole, who dreams up all these things. We have to consult with our affiliates and others to make sure of what we are going to say.

In that respect, I would have hoped it would have been at a time in the future, or that more time would be given, so that we could have the process--

Hon. Mr. Ramsay: I appreciate that fact. In fact, I had hoped to have the bill introduced before it eventually was introduced, and that perhaps would have resolved the problem. However, we were held up and were late getting it into the House, yet we wanted to have the benefit of the committee hearings this summer so we could bring everything back again early in the fall. We have an unofficial target of January 1, 1985. We were chopped up, we were held back a bit and I can understand your concern.

Mr. Sweeney: There is concurrence with your proposal that the changes to the survivor benefits--the spousal survivor benefits in particular--be applicable to both current and future situations. Do you have any suggestions for us as to how the current proposal in this bill could be applied to past survivors? Would you take it just as it is and apply it, or would part of it be applied and not part of it?

Mr. Waddell: To start off, we do not agree with the current proposal in the bill. What we are saying is that, whatever system we have, we want it an equitable system for all the survivors.

Mr. Pilkey: What we are saying is current and those for the future. We are saying, as an illustration, that if the future ones were getting \$500 a month--and I will use that to illustrate a point--that should be picked up for the past. It is very simple.

Mr. Sweeney: What I am really reaching for is that the present proposal is dependent, almost solely, on the age of the spouse at the time of the death. When we are talking about current survivors, we are talking of people who have been in that position, say, for the last 15 or 20 years. How do we go back and make it equitable?

Mr. Waddell: It is very difficult to answer that question, because we do not agree with the structure in the first

instance. It is very difficult, but if you are going to put it in, you have to go back and figure out something. We can always sit down and figure something out if that is what you want. At the moment I do not have it all sketched out, because we are studying whatever the proposal is.

Mr. Sweeney: You indicate in your brief that you want some form of wage loss principle included. You make it very clear that you are not in favour of Weiler's proposal. What would be the recommendation as your alternative?

Mr. Waddell: I think you were referring to when we were talking about the question of permanent pensions. It is not necessarily a wage loss the way Weiler has suggested, but it is something that can be worked out so that we do away totally with the system we have now and the person receives a pension based on more than just the clinical rating that now exists. If there is any loss of earnings that can all be taken into consideration.

Mr. Sweeney: Your proposal on page 8 of your brief would, if I understand you correctly, be an upgraded pension system as opposed to any kind of periodic wage loss system.

Mr. Waddell: That is right. It is all-encompassing. It has to be totally revised and not just added to. We do not agree with the way it is now.

Mr. Sweeney: On page 7 of your brief you point out the failure to define "suitable" and "available." There are two proposals in this committee's report of last year. One is actually in the committee's report for a definition of what "suitable" means. The other is the Saskatchewan definition of "suitable," which has four distinct parts. Have you had a chance to examine either of those and could you make any comment on that?

Mr. Waddell: I cannot make any comment on that at the moment. Looking at the definition we have seen before, the question of "suitable" and "available" is not so much that it is just a question of "available," but it is the strings attached to the "suitable" and "available." If a job is offered to a tool and die maker to sling hamburgers at McDonald's and he rejects it, he has turned down something that was available and under the Weiler proposition it could be reduced. It is not just the specific things you might read that are "suitable" and "available," but what goes along with it, the definitions and the strings.

Mr. Sweeney: For the benefit of at least one member of the committee, would you take a look at those two proposals in our committee report and see if either would be acceptable to you? If not, perhaps you could propose something of your own to us.

Mr. Waddell: We will do that.

Mr. Laughren: It is good to see the Ontario Federation of Labour back again.

On page 4 you talk about the numbers game. I must say I am a little confused. You are talking about industrial diseases. You

say, "Claims were denied to many spouses of deceased workers, for example, due to what we call 'the numbers game.'"

Mr. Waddell: That is my language, granted. That is the way I have reacted on a number of occasions when dealing with spouses who have claims in when their husbands have died of a disease such as asbestosis, mesothelioma, etc. I will not name the company, but I have acted on behalf of the union for a particular company that has since flown the coop and gone down south where it is safer.

Mr. Laughren: I hope you do not feel the same way about Johns-Manville as I do.

Mr. Waddell: In our hearings and with the guidelines we have to adhere to as far as the board's guidelines are concerned, of 10 years of continuous and repetitive exposure and the latency period--I can understand the latency period--I can tell you of one case out of the five in this plant that I handled where the person worked for 31 years in a factory that was very small, with asbestos all over the place, but because he did not have his nose in an asbestos barrel for 10 years, and he only had it for three and a half years, he did not die of a work-related disease.

They play the numbers game. My definition of the numbers game is the personnel people add 10 months here and one year there. As long as it does not total up to 10, you do not win your case.

Mr. Laughren: I see.

2:30 p.m.

On page 5 at the top you talk about "financing be made available to expand community clinics," etc. I think you are the first group that has recommended that, although in Sudbury the Steelworkers' representative, Jim Hickey, talked about the amount of time his local spends on compensation cases. It is true of the Sudbury Mine, Mill and Smelter Workers' Union as well.

I do not know whether there has ever been a formal request or bill sent to the Workers' Compensation Board or to the Ministry of Labour or whether the Ontario Federation of Labour has ever actually made that pitch before. Do you know?

Mr. Waddell: I do not know whether we have ever made a formal brief, but we have certainly talked about it. All of you on this committee must spend I do not know how many hours of your time helping your constituents with workers' compensation problems. I am saying you could be helping yourselves by having some funding in your community for the use of other people who are competent and willing and want to do something and who have some compassion and will look after these people rather than let them go without.

We are not talking against worker advisers, obviously, but unless you are going to have a lot of them in the province, you



had better start giving further assistance. There are a lot of people out there who are without proper counsel.

Mr. Laughren: The point can be made as well that here we have the public sector propping up the private sector again and doing the compensation board's job. That is what the unions are doing. They should not have to do that. It is also what our constituency offices and the legal clinics are doing. That is a direct subsidy of the compensation board. I get tired of the employer groups talking about abuses of the system. The public sector is being abused by the compensation board. I feel very annoyed about that whole thing. In my own constituency office, 80 per cent of our time is spent on compensation problems that are picked up entirely by the public sector.

The other thing I wanted to ask you is not directly related, although it involves something some of us would like to see in the new bill but which is not there. It has to do with back problems and disabilities. The compensation board admits that if it could get rid of back problems, it could get rid of a lot of the problems in the system. Doug Cain from the WCB is here. He is very highly placed at the board, by the way. I wonder if you remember the percentage of claims that relate to backs. Did we ever get that number?

Mr. Cain: Approximately 24 per cent of all new claims are back disabilities. Approximately 50 per cent of all reopened claims are back disabilities.

Mr. Laughren: That is 24 per cent of new claims and 50 per cent of recurring claims.

Mr. Cain: Yes.

Mr. Laughren: That is one of the biggest problem areas. The board has enormous problems with this too and I am sure would like to see it resolved. I wonder whether the OFL has ever put its mind to this. There was some kind of committee struck by the board, although I am a little vague on what it was. It was to deal with back problems, and the OFL was involved.

Mr. Waddell: Maybe you are referring to the joint consultative committee of the WCB made up of labour, management and people at large. It did start to deal with that question, and the thought by the labour representatives on that committee was that it should be treated as an industrial disease in a sense. I cannot explain all the medical arguments to you here, but it would be looked at that way. We appreciate it is a serious problem that should be studied further and about which recommendations should be made. The joint consultative committee is standing still at the moment because the legislation, if passed, will not simply put the issue on a back-burner but put it out completely.

Mr. Laughren: Why would that be so?

Mr. Waddell: I can answer your question. It is not just an opinion of mine. I certainly understood that if we changed the composition of the corporate board of directors and brought in a



tripartite board and appeals, there would be sufficient input from labour and others to give it that same complexion. I would say that might make some sense.

Mr. Laughren: This morning there was a man here from the Labour Council of Metropolitan Toronto, Mr. Buonastella--is that how you pronounce his name?--the secretary of the Labour Council of Metropolitan Toronto. What is his first name?

Mr. Lupusella: His first name is Orlando.

Mr. Laughren: Orlando Buonastella.

Mr. Meagher: The health and safety committee secretary.

Mr. Laughren: Thank you. He made a point on this that really struck a responsive chord in me. I never really thought of it that way before. I asked him to send it to us. He did not have a written brief. The point he made was about the old argument that when a worker gets hurt and it is a back problem, if there is a degenerative disk disease, forget it. He is going to get 30 per cent maximum. The most he will ever get out of a back problem is 30 per cent, and that only if he is in terrible shape. It is more apt to be 10 or 15 per cent.

His point this morning was that what we are judging workers by is the 20-year-old perfect specimen, as though the ageing process was not a natural process that all workers have to go through. I said to him, "I hope you develop that theme a bit and pursue it." It really got to me because in the Sudbury area back problems absolutely drive us wingy for those people who are advocates. I know it is a tough one.

Mr. Meagher: It seems there are certain occupations where the back problem is more prevalent than others. Mining is one of them. People who work swinging garbage and things of that nature perform certain movements that add to the possibility of back problems developing. You are right.

Mr. Laughren: It is certainly unreal the way we deal with it now as though it was not inevitable that people's backs degenerate.

This question may be premature at this point, but has there been any consultation between the Minister of Labour and the OFL on the new corporate board and all that sort of stuff, or would that be premature until the bill is passed?

Hon. Mr. Ramsay: There would be no consultation as yet.

Mr. Laughren: Is that because the bill has not passed?

Hon. Mr. Ramsay: That is correct.

Mr. Laughren: You are worried that with your slim majority you might not get it through?

Hon. Mr. Ramsay: Yes.

Mr. Lupusella: I would like to welcome the Ontario Federation of Labour. It is nice to see them appear before the committee. We know for a fact that they are speaking on behalf of the workers. They have been repeating, emphasizing and rephrasing the same positions so many times that it appears the government must listen to a voice of organized labour. At any rate, I do not want to make any further editorial comments. I would like to get into specifics.

Mr. Chairman: That is the last editorial comment for the day.

Mr. Lupusella: My specific relates to the survivor spouses. You clearly spelled out the position that any improvement that will be made must apply to all--future and current survivors--which supports the theory of a retroactive clause that must be implemented for all survivor spouses.

Mr. Sweeney pursued the issue of what kind of formula should be used in the case of the previous spouses compared to the current survivor spouses that are covered under the present act. Your position is that the new survivor spouses' benefits should be implemented equally for all. Am I correct?

Mr. Waddell: That is right.

Mr. Lupusella: Actually, you are looking for a retroactive clause which will take into consideration all the survivor spouses in spite of the ceiling at the time when the worker passed away as a result of an industrial accident. Am I correct?

Mr. Waddell: Correct.

2:40 p.m.

Mr. Lupusella: So I think we really do not need any new formula that should be implemented for the past survivors, but one that should be equally implemented based on the features of Bill 101.

One thing I would like to get from you relates to the issue of wage loss. Why are you rejecting the principle of wage loss? My own interpretation is that because workers are receiving different earnings while they are employed, when they suffer serious injuries the wage loss item can discriminate against workers who are on the lower end of the earning scale. Am I correct?

Mr. Waddell: Correct. As I believe I answered Mr. Sweeney, the wage loss concept might sound good when you read the first few lines of it, but when you start looking at what occurs, especially when you take the way the economic situation is in our society today, if a person with a permanent disability is offered a particular job--we are talking about this whole "suitable and available" thing--as far as I and my colleagues are concerned, the person could end up with virtually nothing and a permanent disability because of this whole wage loss.

Was he offered a job? Did he turn it down? There are so many penalties and so much is unsaid. This is what we said in our introduction. If we had a total explanation in here--it might be quite impossible or very difficult to do it that way, but when we are looking at things, I do not think at my age or at our age we are about to buy a pig in a poke. We have to look at things and examine them from all sides, and we are willing to do that with anybody at any time.

Mr. Lupusella: Are you comparing the wage loss item to the present supplement pension, which is unfairly implemented by the board with respect to injured workers in the sense that if the person is not co-operating with the rehabilitation department or the deeming provisions which--

Mr. Waddell: That whole provision was of benefit to some but not to too many. I am not looking at it in the same light. That is what your question is, though.

Mr. Pilkey: Let me say something about the wage loss concept. We were not in favour of the way it was introduced. That does not mean that in the future we ought not to take a look at some sort of wage loss concept if it fits into what we see as just and equitable for people. However, as I understand the proposition as it is currently enunciated, it certainly would cut off some people who would have had some form of pension.

We want to talk about the suffering that takes place as well as the injury itself. In other words, there ought to be some compensation for that. That is what we have been saying, and the wage loss concept does not do that. It is the old truck driver/piano player concept. If a piano player loses a finger, he has had it; but a truck driver can still drive and get 100 per cent of his wages. However, there is some suffering that goes with losing that finger, and we say there has to be some compensation for that and whatever else spins off from it as well.

At this point we are saying the mechanisms that have been put in place as far as the wage loss concept is concerned do not cover all those items that we think should be covered as far as the concept is concerned. It has been adopted in other jurisdictions--we understand that--but we want to have some guarantee.

The other thing is that under the wage loss concept, if some people were not getting a pension and were reinjured, how do they get back into the stream again? That bothers us too. How do they get back in? I appreciate that there are mechanisms for getting in again, but if you have a pension, you are in the stream--do you follow what I am saying?--instead of being out of it and having to get back in. It is much more difficult to get back in after you are out. We need a lot of guarantees in that area before we accept the concept in its entirety.

Mr. Lupusella: In Quebec, in the proposed legislation on workers' compensation, there is a specific clause that has been suggested, which is the right to return to the previous employer. Do you not think that after the outcry of injured workers, and the



Ontario Federation of Labour speaking on behalf of injured workers, it is time the government moved immediately in this direction?

Mr. Waddell: I do not know. If we have to pray to get it, maybe we will start praying. Yes, I would hope so.

Mr. Lupusella: You stated that Bill 101 offers so little to injured workers, with minor improvements. It is fair to say that thousands of workers who have already been injured are not receiving any specific improvement in their level of benefits as a result of Bill 101. I know what your answer is, but after seeing thousands of injured workers appearing before the committee talking about their meagre pensions and injustices and so on, do you not think that Bill 101 should take into consideration further revisions on behalf of the injured workers who are at present receiving permanent disability awards from the board?

Mr. Waddell: Absolutely. We have made this clear on many occasions; in our presentation to Professor Weiler, for example.

We in the federation work with injured workers just about every day, specifically myself. I have many files of injured workers who receive approximately 20 per cent for a back disability. The worker may be a new Canadian with no ability to read English and whatever who is getting a 20 per cent pension. I had one Portuguese chap say to me--I will not mimic him; it would be very unfair--"Should I go out and murder someone and they will hang me and look after my wife, or kill myself and they will look after my family?" The man was quite sincere. He wanted to work, but he could not work because of his back and he was getting 20 per cent. That man and all of his type should be looked after.

Mr. Lupusella: I do not have any further questions because I know what the answer will be.

Mr. Chairman: That has not stopped you before. I do not think there are any other questions. Mr. Hennessy has one.

Mr. Hennessy: I am not a member of the committee, but I am sitting on it this week. I have heard quite a few organizations asking for representation of labour on the board. No doubt there would be a lot of people wanting to get on the board, such as other unions. Would you have a meeting and select somebody? How would it be done so that it would be satisfactory to everybody?

Mr. Pilkey: We run a very dictatorial organization, and I make all the selections. I do not consult anybody.

Mr. Hennessy: Just like Hitler.

Mr. Pilkey: That is right.

Interjections.

Mr. Chairman: Thank you very much for your interesting brief. It will help us in our deliberations in September when we sit down to the clause-by-clause consideration.



2:50 p.m.

The next witness is the WCB committee of the Canadian UAW council. We have their brief, exhibit 7, which we received earlier. It is apparently in our original package.

Welcome to the committee, gentlemen. I guess the appropriate way is for whoever the spokesman is to introduce himself and the whole delegation.

CANADIAN UNITED AUTO WORKERS COUNCIL  
WORKERS' COMPENSATION BOARD COMMITTEE

Mr. Orr: Mr. Chairman, my name is Bill Orr and I am chairman of the committee and financial secretary of Local 199, United Auto Workers in St. Catharines. At this time, I will introduce the other members here. Leonard Harrison is UAW staff rep. Jim Crocker is a benefit rep from Local 1520, UAW in St. Thomas. Ray Lebert is the financial secretary of Local 444 in Windsor. Bob Longueay on the extreme left is the president of Local 1973 in Windsor. Larry Ladd is the service rep of Local 222 in Oshawa. Hugh Kyle is the president of Local 252 in Toronto.

Mr. Chairman: You may proceed in any way you wish, either read through your brief or--

Mr. Orr: We have long felt that improvements to the act were required. We are pleased that the government is recommending some improvements in Bill 101, but we are deeply concerned about some of the proposed legislative changes, in particular the one pertaining to changing the benefit structure to 90 per cent of net earnings.

At this time we ask the committee to allow us to discuss our brief, and from time to time either myself or another committee member will comment on it. All the committee members here except for Brother Harrison handle workers' compensation problems on a daily basis, so we feel we are quite competent to answer any questions from the committee and to present our views.

Mr. Chairman: I think what we would like you to do is read through everything first, if you would. Otherwise, it slows down the process. We get bogged down on one particular item. If you read through the whole brief, the committee members will ask questions, and whoever wishes to answer can answer.

Mr. Orr: Do you want me to read this entire--

Mr. Chairman: It is really up to you, but it seems to work best as far as we are concerned.

Mr. Orr: 1. The proposal to reconstitute the corporate board of the Workers' Compensation Board with the addition of external directors: We agree with the intent of the proposal. However, we feel the success of the change will be determined by the policies and procedures that the new structure develops and establishes as they relate to claimants.

2. The proposal to establish a new tripartite appeals tribunal: We agree with the establishment of a tripartite appeals tribunal but must insist that the worker's right to take his case as a last resort to the Ombudsman must be retained. This would still allow the matter to be taken to a select committee of the Legislature.

3. The proposal for the use of a medical assessor by the appeals tribunal to assist the tribunal regarding medical issues in dispute: We agree that the proposed change is a definite improvement over the present system, but we have reservations as to the type of positions that would be appointed by the cabinet.

4. The proposal to establish an industrial disease standards panel to review and make recommendations regarding compensation policies and practices for occupational diseases: We concur with this recommendation since we feel it is long overdue and we commend the minister for its inclusion in the bill.

5. The proposal to expand the office of worker adviser and create the office of employer adviser, both to report to the Minister of Labour: We agree with the office of worker adviser being expanded and made independent of the board. We are totally opposed to the establishment of an employer's adviser since this is against the entire concept of no-fault workers' compensation. If this section is implemented, it will create havoc with the appeals system and would justify workers' demands for the right to sue their employer for any work-related disability.

6. The proposal to expand the coverage of the Workers' Compensation Act to include domestics: We totally agree with this proposed change.

7. The proposal to require that all employers pay their workers full wages and benefits for the day of injury: We agree with this proposal but strongly urge the implementation of full benefit coverage paid by the employer for the length of the work-related disability.

8. The proposal to increase the covered earnings ceiling to \$31,500 per annum: We welcome the increase on the covered earnings to \$31,500 but fully support the position of no ceiling whatsoever.

9. The proposal to improve the rehabilitation supplement provisions of the act to provide for inflation adjustment of pre-injury earnings in calculation of supplements; supplements equal to old age security levels for those older workers unlikely to benefit from vocational rehabilitation; integration of supplements with Canada pension plan disability benefits: We concur with the inflation adjustment of pre-injury earnings in calculation of supplements. We concur with the payment of supplements to workers unable to benefit from vocational rehabilitation, but we insist it be a full supplement and age should have no bearing on eligibility to it. We are now and have always been totally opposed to the carve-out of any benefit.

10. The proposal that full compensation benefits be based upon 90 per cent of preinjury net earnings: We feel that the present 75 per cent of gross earnings should be maintained and based on nominal rate and the earnings ceiling and its calculation should be removed. If the board wishes to pay extra moneys to eligible dependants of injured workers, this should be in addition to the present benefits payable. Any attempt to base benefits from gross to net earnings would be an administrative nightmare for everyone concerned.

11. The proposal for a dual award scheme for survivors, comprising a lump sum payment for non-economic losses and a continuing payment based on the deceased's pre-injury wage: We feel that a surviving spouse can never be adequately compensated for the loss of a loved one. All surviving spouses should receive benefits at board maximum levels, including lump sums. All dependent children should have fully paid educational opportunities made available. There should be no carve-outs and all the complicated rules and criteria should be scrapped in their entirety.

12. The proposal to extend protection against employment discrimination under the Human Rights Code to cover explicitly workers' compensation claimants: We concur with this proposal.

13. The proposal to extend to executive officers of employers the exemption from civil liability with respect to accidents that now applies to employers and workers: We are totally opposed to extending to executive officers of employers exemption from civil liability actions. In fact, we feel that in certain extenuating circumstances involving obvious negligence the right to take civil liability action against all employers should be granted.

3 p.m.

14. The proposal to amend the act to clarify the board's authority to finance a variety of training programs in health and safety education: We are in full agreement with this proposal and feel the variety of organizations mentioned in the background note should include labour organizations.

In conclusion, the UAW strongly believes the money saved by the implementation of the majority of these proposals should be used to improve further the benefits and programs payable under the act.

Mr. Chairman: Thank you very much, Mr. Orr. Before asking for questions from committee members, the Minister of Labour (Mr. Ramsay) has a comment.

Hon. Mr. Ramsay: I have a point of clarification before I go. I want to compliment the UAW on its format. This is a very straightforward, concise critique of the bill. It is the first presentation we have had of this nature, and it is refreshing.



I wanted to clarify your proposal 2. You say, "We agree with the establishment of a tripartite appeals tribunal but must insist that the worker's right to take his case as a last resort to the Ombudsman must be retained." There is no thought of taking away that right. The worker would still have the right to go to the Ombudsman.

Mr. Orr: Then we were in error. We thought it would go to the appeals tribunal and then--

Hon. Mr. Ramsay: That is it as far as the WCB is concerned.

Mr. Orr: But it could still go to the Ombudsman?

Hon. Mr. Ramsay: Yes, you can still take it to him.

Mr. Orr: Thank you very much.

Mr. Sweeney: On the same proposal, there is a provision in the legislation for the corporate board to review an appeals board decision on a matter of interpretation, law, etc., and to send it back to the board for review. Do you have any comments on that? There has been some dispute and disagreement among previous witnesses as to whether that was a good thing.

Should the appeals tribunal be absolute and final, other than the right to go to the Ombudsman that the minister mentioned, or in some cases should the corporate board have the right to review a decision of the appeals tribunal? Have you considered that?

Mr. Orr: Yes, we have talked about it. We use as an example right now the fact that in the unemployment insurance legislation you can appeal before a board of referees. If that board of referees makes a decision the Canada Employment and Immigration Commission feels is an error in law, then the commission has the right to appeal that decision to an umpire.

We feel the board wants the same right here. If the appeals tribunal makes a decision that is against the contents of the act, the board feels it should be able to overrule it. Are you asking me if we have a problem with that?

Mr. Sweeney: Yes.

Mr. Orr: I do not think we do.

Mr. Sweeney: Your proposal 3 refers to medical assessors. You have a reservation about the type of physicians that would be appointed by cabinet. Do you have any proposals for getting round that reservation? For example, would your own association in any way want to be involved in recommending such appointments, or would you suggest somebody else be involved in it?

Mr. Orr: There should be a joint effort by the tribunal in selecting the physicians, but we have questions such as, if such appointments are confirmed by cabinet, are they lifetime



appointments? How long are the physicians going to hold the positions? If experience shows that certain physicians seem to be consistently taking an anti-worker position, we want the right to look at them. I am sure the employer would want the right to look at them if he felt they were always ruling in favour of the worker.

As far as the selection of a physician is concerned, we feel we should have input--by "we" I mean labour--into the type of physician who is selected. I do not know whether this means you are going to use a physician who is a specialist in one type of medicine, who is going to rule on an injured worker whose problem is not related at all to his specialty.

Mr. Sweeney: Can I ask the minister if he could indicate, in terms of drafting the legislation, what selection procedure he and cabinet have in mind; second, based upon the comments just made, what duration are we talking about; and third, what provision would there be for review and perhaps change? I am not asking the minister to say precisely what is being done, but obviously he must have had something in mind when he drafted it.

Hon. Mr. Ramsay: I will get that and submit it to the committee within the next week.

Mr. Sweeney: Yes, because we do not know the answers to those questions either.

Hon. Mr. Ramsay: I want to be precise when I report to you.

Mr. Sweeney: I go then to proposal 5. Towards the end of your comment you state, "and would justify workers' demands for the right to sue their employers." I do not quite understand the way you are using that in this context. Could you expand on that?

Mr. Crocker: We are talking about situations of gross negligence. If the employers are going to have their own employer adviser, as we say in our statement, we feel this takes away the entire concept of no-fault workers' compensation and, therefore, in cases of gross negligence in the work place the worker should have the right to sue the employer for any work-related disability.

Mr. Sweeney: The connection I am trying to make is your reference to the appeal system immediately preceding those words, and then the justification for suit.

Mr. Crocker: When they appeal, it is two separate things actually, because we feel it is going to create a system where adviser is going to be going against adviser and the only real loser in the system will be the injured worker. We anticipate it will really tie up the whole appeal system in a lot of cases; not so much with our types of claims, because most of us handle our own appeals, but we are going to create a situation where the worker adviser will be doing appeals against the employer adviser. That is where the system is going to be tied up extensively, and the only real loser in the system will be the injured worker.

Hon. Mr. Ramsay: This point you have in your brief was also brought forward by the Ontario Federation of Labour just

prior to your presentation. I would like to take a moment, not to defend the employer adviser, but to tell you some of the thinking and rationale behind it.

When we discussed this we were not thinking of the General Motors or Fords or Chryslers or Algoma Steels or Incos. What we were thinking of with an employer adviser was the small businessman, the fellow who has two or three or fewer than 10 employees, who is just as confused about the bureaucracy in the WCB as is the average worker.

I am not suggesting it will not develop as you say, but I envision it as an advisory sort of person who will assist the small employer in knowing what his rights are and what the procedures are and that sort of thing. I do not necessarily see it as an advocacy role. It could well develop into that but I do not see it as that. That certainly was not the fact we discussed when we looked at this concept. It is just someone to take some of the uncertainty out of the system for the small employer who has had little or no experience whatsoever in dealing with WCB, except for paying his assessments.

2:10 p.m.

Mr. Lebert: That may be the concept of what you thought when you first put this thing together, but we envision a corporation like Chrysler or Ford just completely tying up the whole system by using employer advisers and in reality holding back the claims process by using the full-time worker advisers.

All of us sat down and talked about this, and I know what you are saying in essence about the small businessman who has maybe 10 or 15 people working for him and he could use that type of thing, but I am sure in his everyday life he also uses lawyers the same as our people.

I do not know how many people use the worker advisers outside the small community, but we see it as a way for Chrysler, GM or Ford to tie up our claims to the extent that it is nothing but complete havoc and chaos as far as the claims are concerned. It delays the claims to no end where the employees are forced back to work. That is the way we see it.

Mr. Laughren: On that matter, during the earlier debate on this in the white paper--John Sweeney can perhaps correct me if I am wrong--did we not try to make an amendment to have it so that only employers with fewer than 20 employees--I will wait for the minister because I want him to--

Mr. Sweeney: That was part of it. If it was going to be in at all, we said there should be a limit of 20 employees, and otherwise you could not use this.

Mr. Chairman: I recall that now.

Mr. Laughren: That is why I want the minister to hear this. I think it was his members on the committee who would not support us when we tried to amend it so that the only people who



could use the worker advisers would be employers with 20 or fewer employees. That would resolve the problem that has the UAW worried and I think has the minister concerned.

Perhaps he could have a quiet word in the corridors of power with his colleagues about accepting an amendment or moving one himself on this section.

Hon. Mr. Ramsay: I am interested in this aspect of the conversations today, and I will take under advisement what I am hearing today.

Mr. Lupusella: In view of your colleagues' positions, that is why your presence is well justified. Am I correct?

Mr. Laughren: Maybe that is why your colleagues have all left today.

Mr. Sweeney: I want to add briefly to that. When we were debating this--it seems as if it is almost a year ago now--there seemed to be some acceptance of the kind of employer that the minister has just described. I think we have all run into them in our constituencies, the guy with only half a dozen employees. He suddenly faces a workers' compensation claim and he does not know what to do. He is as lost as anyone else. Most of those people, frankly, cannot afford lawyers, just as most injured workers cannot afford lawyers.

If there had been a limitation or something like that--by the way, I am sure you realize there is contained in the occupational health and safety legislation a limit as to at what time the work place mandates that kind of setup. We felt there was an equal one here.

Anyway, I am pleased the minister has said he is prepared to reconsider that because I think it is an important criterion.

Hon. Mr. Ramsay: As an aside, as far as I am concerned, the constituency assistants for all three parties, for all 125 members, know more about workers' compensation than do any group of lawyers.

Mr. Laughren: That has to be telling you something.

Mr. Sweeney: They know more than most lawyers.

Mr. Kyle: With regard to the remarks regarding the small employer, I represent some 26 plants in the Metro Toronto area, most of which are small plants and do not relate to General Motors or Chrysler.

During the course of the last three years I have dealt with appeals before the board, and each of these plants had lawyers representing them at the appeal hearings. There is no hesitation at all in contacting lawyers for the purpose of appeals. In fact, one of the companies hired an ex-investigator for the board for the purpose of handling the compensation problem. That was a plant with a very high lead problem that we are dealing with.





The question of an employer adviser for the purpose of assisting the small plants sounds very much like footing the bill for an expense that the small employers may currently be experiencing.

Incidentally, during the course of these last three years, we have not lost an appeal against the awards; so it has been an even bigger expense, and I guess that is why this thing is here.

Mr. Laughren: We had better tighten up the entrance requirements for law school.

Mr. Sweeney: Let me move on to proposal 10, in which you say you would rather keep the 75 per cent of gross than move to whatever per cent of net. When this proposal was first made to the committee, the argument that was given was that moving to a percentage of net, despite the administrative difficulties which were recognized, was fairer to a worker who is married and has a couple of kids, for example.

If you have two workers both earning \$25,000, or whatever figure you want to pick, one single and the other married with two children, the tax position of the single man is obviously much heavier and, therefore, for him to get 75 per cent of gross means he is going to end up with more dollars in his pocket compared to what he was making before, in terms of take-home pay, than the man with a wife and a couple of children.

In other words, moving to the net position recognized the tax position of different types of workers. You seem to be suggesting that is not a sufficiently important factor, that the difference would not be great enough or that the administrative difficulties would overbalance it.

Mr. Lebert: Just the opposite is true. There is less money for almost all the people who are working in Canada by going to 90 per cent of net versus 75 per cent of gross. Have you ever put a pencil to it, as far as how much a guy would make?

Mr. Sweeney: We were shown a table that showed--

Mr. Lebert: Where would the guy benefit? That is the question I would ask anybody here. Where would the guy benefit? On what wage scale would the guy benefit, 90 per cent of net, single versus married? What wage scale?

We figured out some figures ourselves, not only from our place but also from other factories around that do not make the money we make, and we have yet to prove where this is a greater benefit to the individual than it is the way it is now; in fact, the way it is now, the guy is getting a truer picture of his earning power loss because he was injured.

Mr. Laughren: As a matter of fact, the board saves \$11 million with this proposal per year.

Mr. Lebert: Yes. The figure sounds good. Let me just tell you right now that as far as I am concerned, the figure of 90



per cent versus 75 per cent is great. You throw that out and everybody says, "Oh boy, that is great." But figure out net versus gross. I guess the other thing this committee would like to know is, when we are saying net earnings, are we talking about all deductions? Are we talking just income tax, Canada pension plan and unemployment insurance?

Mr. Sweeney: The last one.

Mr. Lebert: UIC and no CPP, or what?

Mr. Sweeney: No.

Mr. Lebert: The three?

Mr. Sweeney: Yes, those three only.

Mr. Lebert: We use those figures in our particular plants and we use them in some of the smaller plants, and I do not know where you are getting the idea that anybody benefits from it.

Mr. Sweeney: So your experience is that even with that relationship between dependants and no dependants, 75 per cent is still preferable?

Mr. Lebert: What is the idea behind it? The idea is to compensate me for what I am losing. Whether I am married or single, I am losing X dollars by being hurt. I could receive 75 per cent of my gross; that is what I making every week. Now you are saying that instead of that, we are going to have a two-tier system, or maybe three or four tiers.

The guy in the line next to me, who happens to be married with three kids while I happen to be single, is going to be making X dollars more than I am, yet I am losing the same amount of money as he is as far as earning power is concerned. I do not understand this board's sitting down and saying that is a benefit to the people. It is not a benefit to the people. It is detrimental to the people.

Mr. Laughren: Do you know what it is? It is one group of injured workers subsidizing another.

Mr. Lebert: The administrative nightmare, as stated in our submission here, would be just chaotic. We have people now, as you know, who are in the plants, who put themselves down as a single person for tax benefits, to save money that way. They pay a little bit more in tax so that when February comes, they get some money back from their taxes. It is just going to be an administrative nightmare, not only for the corporation but also for the unions and this particular board.

Mr. Chairman: Mr. Cain can perhaps relate some numbers to you.

3:20 p.m.

Mr. Cain: If you wish, I can give you the numbers on a situation of 90 per cent of net and 75 per cent of gross income





for a married worker claiming a spouse. This is the comparison of the two, and these data reflect 1982 income tax tables.

First, one must mention that under Bill 101 what one is saying is that gross earnings are the nominal rate of pay that a worker receives, whether it be hourly, daily or weekly. Whatever the basic pay structure of that worker is, you take that as gross and extend it over a year.

At that point, you determine the person's tax status, whether single, married with a spouse, etc. Then on the basis of that, you deduct the probable income tax, the probable unemployment insurance rate and the probable Ontario health insurance plan contribution. Having deducted those three, you--

Mr. Chairman: Not OHIP.

Mr. Cain: I am sorry, Canada pension plan--from that, you determine net earnings and then take 90 per cent.

Using that approach with a married worker who has a dependent spouse, if he were earning \$10,000 a year, 90 per cent of net income is \$8,580.95; 75 per cent of gross is \$7,500.

Mr. Orr: Would you say that again?

Mr. Cain: At \$10,000 gross earnings, 90 per cent of net income is \$8,580.95; 75 per cent of gross is \$7,500. At \$15,000 gross earnings a year, 90 per cent of net is \$11,900.80 and 75 per cent of gross is \$11,250. At \$20,000 gross, 90 per cent of net is \$15,082.71; 75 per cent of gross is \$15,000.

At \$25,000, 90 per cent of net income is \$18,186.50, and 75 per cent of gross is \$18,750. It is at this point that they begin to cross.

At \$30,000 gross income, 90 per cent of net income is \$21,097.61 and 75 per cent of gross income is \$22,500. That is approximately the maximum recommended in Bill 101, so I will stop there; it is \$31,500, so it is approximately at that level.

There is a slight additional factor that is not included in that table. That is, because of the fact that the compensation payments are not taxable, at the end of any given tax year there will be a slight rebate that will add to those figures.

Mr. Lupusella: On the escalation factor of the inflation rate on the level of benefits, is this a matter of policy or legislation?

Mr. Cain: I am sorry? Could you--

Mr. Lupusella: The inflation rate.

Mr. Cain: You are talking about an automatic inflation factor?

Mr. Lupusella: No, not automatic. I do not know whether it is part of the board's policy or whether it is within the act



to add the inflation rate when there are amendments to the legislation--how the inflation rate is affecting injured workers covered under Bill 101.

Mr. Cain: Under Bill 101, section 45, where we are talking about a pension supplement--or even under another section where we are talking about a supplement being paid when a person is temporarily totally disabled but cannot find work, and we increase to full benefits--the subsections state that in paying that supplement the board will have regard for inflation factors from the date of the accident to the point the supplement is being paid and continue to have regard for that as time goes on.

The inflation factor that the board is to take into account is not specifically designated. One would assume it would be the average industrial wage, consumer price index, or one of those inflation factors.

Mr. Lupusella: Am I correct in assuming that the inflation factor will not be implemented on behalf of injured workers covered under Bill 101; that is, those with temporary total disability?

Mr. Cain: Under temporary total disability injured workers will have their earnings escalated--

Mr. Lupusella: To a fixed ceiling.

Mr. Cain: Yes, at the time the bill becomes effective, but their earnings will be escalated by any ad hoc inflation factors applied by the Legislature in any given year.

Mr. Lupusella: But the escalator factor for inflation within the framework of the present act will not be implemented for injured workers under Bill 101. That is the point I want to make.

Mr. Cain: Section 42 of the current act, which talks in terms of inflation factors if a person is on compensation one year, two years, three years or four years, will no longer exist and will be replaced by another inflation factor.

Mr. Lupusella: At the time they receive the wage loss or the supplement pension. Am I correct?

Mr. Cain: It states within the section on supplements that the worker is entitled to inflation factors on earnings from the date of the accident. That will have to be applied because the section says the board must do it.

Mr. Lupusella: That is why I do not understand the framework of Bill 101. If I get injured and I stay on WCB benefits for two years receiving total temporary benefits, then I will be placed on a pension and there comes into the picture the supplement pension or whatever the case may be. The board does not have any right to implement the escalator factor of inflation as it does under the present act.





Mr. Cain: Under this bill it does not?

Mr. Lupusella: Under this bill.

Mr. Cain: Under the current act, if you were on compensation for two years, in theory at the start of the second year you would get a 10 per cent inflation factor. However, if by chance you went back to work for a month or two weeks--

Mr. Lupusella: You would lose it.

Mr. Cain: You would lose it, because you were not on it for a year. Under Bill 101 you will get it, so that is different.

Mr. Chairman: I would like to move on. We are holding up the delegation.

Mr. Lupusella: This is very important because it substantiates the principle of why the union is against the 90 per cent of net. Injured workers are in theory the beneficiaries of more benefits, but in fact they are losing more benefits.

Mr. Chairman: I would like Mr. Sweeney to finish his line of questioning. Then you will, no doubt, have an opportunity.

Mr. Sweeney: I think the figures have been given to you, and you have to decide yourself whether you agree with them. If I recall correctly, the \$20,000 figure seems to be the crossover point. More important, what I tried to illustrate earlier is that an injured worker with dependants is more likely to benefit from the net than from the gross. Obviously, the more dependants there are, the more workers are supposed to benefit.

Mr. Orr: The average industrial wage in Ontario in 1984 is \$21,000. Right off the bat you are saying anybody who is earning the average or above it is going to suffer under the new legislation. I cannot see that as being fair.

Right now in General Motors or Ford a line-tied assembler is earning \$27,185 a year on a 40-hour week. Now this person is going to take a cut. You seem to have the idea, if a person is earning \$21,000 a year on one income, he is going to break even. If he is part of a two-income family, which the majority of families are today in order to survive, he is going to take a cut. I do not follow why he should take a cut.

3:30 p.m.

The Canada Employment and Immigration Commission used to have a dependant structure and it got rid of all that. Now the Ontario Workers' Compensation Board is advocating something that the federal unemployment insurance got rid of years ago. I do not see why.

Right now one of our members can come in and tell us how much he is getting from compensation, and we can quickly tell him whether he is getting what he is entitled to. Under this proposed system, I do not know how you are going to tell him. You would not be able to tell him.



Mr. Sweeney: I hear you saying that, even with these figures you have just been given, it is still your contention that 75 per cent is a preferable figure.

Mr. Orr: He used 1982 figures. We are halfway through 1984 and he is giving us 1982 figures. Unfortunately, there are people in this country trying to survive on earnings of \$10,000 and \$15,000 a year, but they are not living.

Mr. Sweeney: I cannot argue that with you.

Mr. Orr: I do not see why--

Mr. Sweeney: I understand. I want to be sure that you have looked at those other ones and taken that into consideration. You obviously have.

I move on to your proposal 11. It is a question of clarification. This is with respect to survivors' benefits. In the last sentence, you talk about no carve-outs. What specifically were you referring to? What carve-outs are proposed in the existing legislation that you are directing your attention to?

Mr. Laughren: You used that term twice. Is it equivalent to stacking?

Mr. Orr: To us, carve-out is where we can have a worker now drawing a long-term disability benefit from his employer and also be in receipt of a pension from the Workers' Compensation Board. The employer takes every nickel of his pension off his long-term disability. He is also drawing Canada pension disability. The employer takes every nickel of his Canada pension disability off his long-term disability. We have all these people running around saying: "The guy is getting 30 or 40 per cent pension from the board. He is getting Canada pension disability. He is getting long-term from his employer. He is rolling in money." It is all a crock.

The big prosperous employer is taking all the money he is getting through these statutory benefits off his long-term disability. That is why we say "carve-out." They carve out the statutory benefit.

Mr. Sweeney: I understand your use of the term, but I am not sure I know what you are referring to in your proposal 11.

Mr. Orr: What we are saying there is that there are all kinds of reasons in proposal 11 where, if the spouse fits this category, or if the spouse is this age, or if the spouse qualifies for this or if the spouse--to us it is a form of carve-out when she is penalized because she is at a certain bracket.

Mr. Sweeney: The age proposal here either increases or decreases the pension or the lump-sum payment, depending upon age. One is intended to offset the other. If I read your proposal correctly, I gather the maximum figures for anyone should apply to everyone, and therefore there would be no difference for any surviving spouse?





Mr. Orr: That is right. The board falls down terribly in fatalities. That is where they really fall down and that is what we are saying. The surviving spouse should get the maximum benefit and she should not get any fancy statement telling her she did qualify or she could have qualified, but she will not because she is such and such an age or because she does not have this number of dependants.

We do not agree with that. We are so concerned ourselves with fatalities that we went out and got life insurance in the plants that we cover from one and a half times if it is a fatality. We got it doubled if it is an in-plant fatality, because we cannot understand why surviving spouses cannot get a liveable wage from the Workers' Compensation Board. We do not feel they are getting it under the present setup.

We are fully in favour of these increases and we want them retroactive to any surviving spouse who is out there. I have several from my plant. I know of two who are not getting a liveable wage.

Mr. Sweeney: I understand what you mean now.

Mr. Laughren: Mr. Chairman, I think the UAW has put the 90 versus 75 issue before the committee the best. It helps us, I believe.

I had a question perhaps more to Doug Cain from the compensation board, who makes most of the decisions made at the board.

Interjections.

Mr. Laughren: It has to do the Canadian pension plan. Now, if you are in receipt of Canada pension, you are not eligible for the rehab supplement. We have all run into that problem.

Mr. Cain: Many times.

Mr. Laughren: The bill would remove that problem. You could still get a supplement if you are in receipt of CPP.

I am glad that these two decision makers are here today. Is it your intention to leave the present rule in this remaining six months, perhaps, until the new bill comes in, or are you saying that because this is pending that that rule should no longer be applied?

Mr. Cain: As far as the CPP is concerned as a bar or an offset under the current act, it is a bar, as you have said, and as far as I understand it at this time it will continue to be a bar until the Legislature decides whether or not Bill 101 is the law to which the board should adhere.

Mr. Laughren: You mean that the law at present says--I went through that act. I did not think it said that you could not pay the supplement if the worker is in receipt of CPP.



Mr. Cain: It does not specifically say that, but as I read out to Mr. Lupusella last week, because of the wording of subsection 43(5), which indicates that a worker has to be available for work and that in essence in receiving CPP, not applying for it, one has acknowledged one is totally disabled and unable to work, because it is one of the rules that you must be totally disabled for the foreseeable future. Therefore, that portion of subsection 43(5) does not exist and we cannot pay the supplement. That is the rationale as I explained it.

Mr. Laughren: I will not get into the debate today with you on the contradictory policy of the board.

Mr. Cain: I appreciate the difference of--

Mr. Laughren: You will not acknowledge that 100 per cent disability, therefore, if CPP rules that the board should pay it, so you are using the CPP to your own advantage.

Mr. Cain: I completely agree that there is a difference of opinion. I was just explaining a point of view, that is all.

Mr. Lupusella: May I have a supplementary? Does the minister not think that it is fair that he write a letter to the board to rescind such a policy?

First, I think the Union of Injured Workers' group wrote you a letter regarding that. The position of the trade union movement is well known. It appears that you stated on several occasions that this policy will be cleared.

I did not see any written letter forwarded to the board emphasizing the importance of rescinding this particular policy as soon as possible. Are you going to give us this commitment that such a process will take place as soon as possible?

Hon. Mr. Ramsay: Mr. Lupusella, very shortly after this week is over we will be holding a series of meetings with the board on various of the points that have been raised. I will discuss it with the board early in the agenda.

Mr. Lupusella: Can you write us a letter--

Mr. Chairman: That is pretty clear.

Mr. Lupusella: --about the final results of this type of consultation with emphasis on the CPP clause?

Hon. Mr. Ramsay: I will consider that.

Mr. Lupusella: Thank you.

Mr. Chairman: Back to Mr. Laughren.

Mr. Laughren: I do not have much more. One thing that makes me nervous in your brief is that proposal 5 on the right to sue the employer. If there is one thing that strikes terror in my





heart is putting injured workers in the hands of lawyers on a regular basis. That really bothers me. I worry about it.

3:40 p.m.

I think I know what you are getting at, but I tell you I do not know where the line is there. I wonder whether the UAW had thought about when and where that line is when a worker could sue the employer.

Mr. Orr: We do not disagree with the present Workers' Compensation Board policy, which normally denies the worker the right to sue his employer, because we know that in the majority of cases this benefits the worker and it benefits the employer. But there are certain cases where there are horrendous injuries where the amounts payable by the Workers' Compensation Board to that worker in no way come near to compensating him. We have always felt that, in that type of case where a worker is made into a vegetable because of an accident, he should have the right to sue the employer.

This is more or less what we had in mind in that. It is not the situation where if a person cuts his finger he has the right to sue the employer. We are not saying that. We are just saying there are horrendous cases where there is no way it could be made up.

Mr. Laughren: If it were in the bill, it would have to put in language such that--

Mr. Orr: It would have to be a percentage of disability.

Mr. Laughren: That would be one way of doing it. Another way would be gross and criminal negligence or something. I think of two cases that bothered me a great deal.

Mr. Orr: I know of one myself.

Mr. Laughren: One is asbestos and the other is uranium. When I think of what went on in those two cases I get angry all over again. You do not have to be an ideological person to know what went on in those two examples and to know there was--I will watch my words--there should have been lawsuits in those cases. That is what you are saying.

Mr. Orr: Yes.

Mr. Laughren: On proposal 14, you say, "In conclusion, the UAW strongly believes that the money saved by the implementation of the majority of these proposals should be used to further improve the benefits." I do not know what you mean there.

Mr. Orr: At that time we did not have the actuary reports. I guess there is not as much money being saved on some of these proposals as we thought. The big saving is in the 90 per cent versus 75 per cent. We thought that if there were any money saved if these proposals were implemented--not that we are in



favour of implementing 90 versus 75 because that is the one we have the most problems with--but if it were, then we are saying that money should be fed back into the corporate board and not allowed to--that is the only reason we have it there.

Mr. Laughren: On that savings thing, Doug Cain pointed out to me--I did not want to use misleading figures--I saw the actuary figures. I do not know who did them. Wyatt Co.?

Mr. Cain: Correct. On the Wyatt figures, I am sorry, you are right. I was just going to come and tell you that. What you said is fine.

Mr. Laughren: It is \$11 million.

Mr. Chairman: Mr. Orr and gentlemen, thank you for appearing before us and giving us your very concise brief. It will certainly help us in our deliberations when we start the clause-by-clause debate in September.

Mr. Kyle: Before we break off, about proposal 2 dealing with section 32, on page 20 of the bill it talks about sections of the act being repealed and a substitution following. If you go to page 21 of the bill where it deals with subsection 6, it talks about the methods for appeal and identifies 14 days from the board's decision before an appeal can be implemented. We had some concerns about whether this was establishing time limits with regard to appeals where they do not currently exist under the act. We would like some clarification on that particular item, subsection 6.

Hon. Mr. Ramsay: I understand it relates only to medical records.

Mr. Cain: The reference you are making has to do with an employer wanting medical records, among other records, for access purposes, the board informing the injured worker that the board would normally provide the employer with specific medical records, and the worker coming back and saying, "I do not wish to have those records provided." The board may rule, "Yes, we feel the employer should have them."

Before the board can provide those records to the employer, the injured worker must be provided with the number of days you commented on to make an appeal to the outside appeal board so that it can decide whether or not those records should be provided to the employer. That is the only issue that is being dealt with because, as you notice, that is under the section that deals with access to information, not with anything else.

Mr. Kyle: So the time limit restriction is purely for the purposes of an employer advising the worker with regard to that information being sought.

Mr. Cain: It is the worker's right to appeal the decision of the board to provide the information to the employer. The worker has that amount of time in which to lodge an appeal and





say, "I do not want you to give that information to the employer." That is the only point that is being made.

Hon. Mr. Ramsay: It is intended as protection for the worker.

Mr. Cain: I would say it is by policy and I would suggest it must be the date the injured worker receives the information.

Mr. Laughren: In the mail probably.

Mr. Cain: Yes.

Mr. Laughren: I could see a situation where the decision could be made and then it would go through the bureaucratic process of getting typed up and mailed out, and those 14 days would evaporate.

Mr. Cain: The act, as was pointed out, specifically says 14 days from the date of the decision of the board. You are quite right. That is what it says.

Mr. Laughren: Does that make you a little nervous?

Mr. Cain: Normally, when we make a decision at the board, 14 days or whatever period of time, we usually say it is from the date the person receives the information or is expected to receive the information because we never know what date he will receive it.

Mr. Orr: Especially when it comes from the board.

Mr. Lupusella: You read this particular clause and you had some doubts. What was the content of the clause which is not clear based on the explanation received by Doug?

Mr. Kyle: We were going through it and talking about the implementation of the appeals tribunal. We got to item 6 and the question of the 14 days came up. We were trying to identify what that 14 days meant, and there is no restriction with regard to appeals currently, as far as anyone is concerned, as I understand it. Now there is this specification saying there is a 14-day time limit. We want to get some clarification on that.

Mr. Lebert: Are you saying that is only based on the board's decision to allow the medical evidence to go to the corporation or the employer, and we would have 14 days after you make that decision and send it to us to appeal that decision of your allowing that to go to them? That is really what that says in there?

Mr. Cain: Yes. We will not send the information for that interval of time to give the injured worker or the injured worker's representative an opportunity to say: "I do not agree. I want to appeal that decision to the appeal board."



Mr. Lupusella: I am also concerned about the issue about the appeals tribunal--

Mr. Chairman: Mr. Lupusella, you are straying off.

Mr. Lupusella: I will be very short.

Mr. Chairman: No. You are straying off, and we have one more witness to hear.

Mr. Lupusella: It is very important.

Mr. Chairman: I know it is important. Perhaps during the clause-by-clause stage you can raise that.

Mr. Lebert: You have 14 days to appeal.

Mr. Lupusella: (Inaudible) time of the appeal tribunal to hear the case, do you not think that--

Interjection.

Mr. Lupusella: No, no. I am talking about something else. Do you not think that under Bill 101--

Mr. Chairman: They are on their way out the door. You can meet them outside and discuss it.

Mr. Ladd: There is a question I would like to ask on proposal number 4.

Mr. Chairman: No, I am sorry, we cannot open it up again. We have tried to go around. We do have another witness to hear this afternoon. I hope we have given you a fair opportunity to get your points across.

3:50 p.m.

Mr. Lebert: Except for one thing, and I think he probably has a legitimate point. To go over this complete document, I must say personally that the bill itself is--I do not want to say it is loosely put together, but there are a lot of things in there that in my opinion really lead one to believe what the intent of that particular language is.

One question I am sure he is talking about is the industrial disease standards panel you are setting up. It is quite important to us as a labour body to find out how one does, because it does not say anything in there, get to that particular body when he wants something done. Maybe I will let Larry go ahead, because it is an important question as far as I am concerned.

Mr. Ladd: I appreciate your allowing this, Mr. Chairman. It is on the establishment of the industrial disease panel. If we feel we have something that is causing great harm to an injured worker, how do we get input to that panel, to have that panel take a look at it?





Hon. Mr. Ramsay: I think--I do not think, I know--you will have the opportunity any time to let your views and concerns be known to the panel. There will be complete access to the panel. I do not understand--

Mr. Lupusella: They want some people on the panel; that is what they are looking for. As the United Steelworkers told us, they would like to have someone sitting on the panel who has the expertise--

Mr. Lebert: Access to it.

Mr. Chairman: That is not what this gentleman said, though.

Mr. Lebert: How do you get at that panel if you have not got access to it?

Mr. Chairman: Mr. Lupusella is suggesting there should be somebody on the panel.

Mr. Lebert: If you had somebody sitting on that panel, you would have access to it. That is what I am saying. The way it reads now, I do not know how you get access to that.

Hon. Mr. Ramsay: The panel will be independent of the board. I think that is an important point. They will certainly be seeking out, I am sure, the opinions of labour and management and all interested groups on the important subjects they discuss and consider.

I really do not see a problem there, frankly. If there is one, come and see me and we will try to work it out, because I just do not--

Mr. Ladd: I will do that.

Hon. Mr. Ramsay: Okay, that is a promise.

#### STANDARD PROTECTION AND INDEMNITY ASSOCIATION

Mr. Chairman: Our final witness for this afternoon is the Standard Protection and Indemnity Association. Appearing for this group are Mr. Herridge and Ms. Connidis.

Mr. Herridge: Thank you very much, Mr. Chairman. My name is William Herridge, and I have with me my partner, Ms. Kristine Connidis.

In the course of the last submission there were some comments made, I think by the minister, that there are many running around who know a great deal more about the Workers' Compensation Act than the lawyers. It is a point of view with which I have a great deal of sympathy indeed. Being lawyers, however, we will do what we can and we hope you will listen carefully to our submission with patience.



Hon. Mr. Ramsay: Can I take just a moment to clarify my comments?

Mr. Chairman: Do you want to defend your position?

Mr. Herridge: It could be well deserved, sir; I am not sure you need to.

Mr. Sweeney: I have no intention of clarifying mine, I will tell you.

Hon. Mr. Ramsay: Nor do I have any intention of backing off. The point that I was making and the point that I stand by is that the constituency assistants in the 125 ridings in this province have to deal with the real problems, the across-the-desk problems, of the injured worker. As Mr. Laughren said, in his riding they represent about 80 per cent of the case load. In my riding they represent about 50 per cent of the case load.

In my case, many of these persons in the constituency offices have 10 years' experience now in dealing with the Workers' Compensation Board and it is something that is difficult for a lawyer who deals with the Workers' Compensation Board perhaps only once in every three or four months to acquire.

That is the point I was making, that these people we have are very conversant with the WCB because of the volume of work they must handle. There was no slight meant to the profession itself.

Mr. Herridge: No slight is regarded by either Ms. Connidis or myself; so away we go on our submission, if I may.

This submission, gentlemen, is made on behalf of the Standard Steamship Owners Protection and Indemnity Association. You may perhaps recall a submission being made to you about three weeks ago by an organization called the Standard Compensation Act Liability Association, which since February 1977 has been insuring ship owners on the Great Lakes against liabilities under schedule 2 of the Workers' Compensation Act.

The Standard Protection and Indemnity Association insured such liabilities up until February 1977. As you will see on page 2 of our submission, and I am sure you all have copies of it before you, we still have 155 cases outstanding with large reserves for them. So certain aspects of the proposed legislation remain of concern to the Standard P and I Association.

If I can give one tangible example of the sort of thing that produces the concern on the part of the Standard P and I, Mr. Chairman, with your permission, I would like to hand out to the committee a copy of a letter which one of the steamship companies received from the Workers' Compensation Board about two years ago.





As the committee knows, under section 29 of the existing Workers' Compensation Act, a schedule 2 employer can be required to make a deposit for the amount of liability that is anticipated he will have to bear, especially with respect to cases of permanent disability.

Mr. Laughren: I love this letter, for example, the \$10 donation.

Mr. Herridge: There are a few other things, if I may comment on it. I am not saying for a moment that the board did anything in writing this letter other than it was to obliged to under the act.

The injury to Mr. X had occurred in April 1969. There had been various correspondence and various payments. In 1975 his employer, Westdale Shipping Ltd., was asked for a deposit of \$45,000. That deposit was duly made, and seven years later along comes this letter from the board, which you can see is concise and to the point.

"The section 29 deposit to cover pension payments in the above claim is now depleted and an additional deposit is required. In accordance with the July 1, 1981, amendment to the act, the above pensioner is now receiving a monthly pension of \$727.25. The amount of deposit required at the pensioner's present age of 69 is \$62,543. We would appreciate receiving your cheque payable to the Workman's Compensation Board of Ontario by August 26, 1982."

Interjection July 26.

Mr. Laughren: It would be a month. What are you complaining about?

Mr. Herridge: Everybody wants prompt payment of his bills, even lawyers.

In any event, the point I wish to make is that when the shipping company received this letter and when, in turn, the Standard P and I received a copy of this letter, there were a lot of questions it wanted to ask.

4 p.m.

In my submission to your committee, gentlemen, there were a lot of questions it was entitled to ask and should be entitled to ask before it paid out this amount of \$62,543. Basically, what our submission reflects is the very real reality and very real problem to the Standard P and I reflected by this letter, the Standard P and I not having written this kind of coverage since 1977, the premium for it having been paid many years ago and no further premium collectable. As I say, it is really to the problems raised typically by this kind of letter that the submission we have filed before your committee today addresses itself.



On page 2 of our submission we say a little bit about the schedule 2 employer. I am sure members of the committee will recall a great deal of this from the previous SCALA submission. I do not know whether you have received any other submissions from schedule 2 employers.

As we say on page 3--I hate to refer to the schedule 2 employers as forgotten employers--but they are a class of employers towards whom, in our view at least, neither the white paper on the Workers' Compensation Act nor, with respect, the final report of your committee directed much attention. I know SCALA did make a submission to your committee previously, but the schedule 2 employer does have the problems, first, of being liable to make direct payment to the board for the individual case and, second, of being obliged by the WCB to make very large deposits under section 29 of the existing act.

On page 4 we direct our attention to the new appeal procedure set forth in Bill 101. We say to the committee this is a most welcome development and we think it is a development that will be of great assistance in the administration of the act in future years. In the first full paragraph on page 4 we ask that the workers' compensation appeals tribunal, when it is established, include a representative of schedule 2 employers so their point of view can be made known on this tripartite board.

We are, however, unclear as to the effect of section 86n of the proposed act. The committee will recall that subsection 86n(1) is the provision that says:

"Where a decision of the appeals tribunal turns upon an interpretation of the policy and general law of this act, the board of directors of the board may, in its discretion, stay the enforcement or execution of the order of the appeals tribunal, review and determine the issue of interpretation of the policy and general law of this act, and direct the appeals tribunal to reconsider the matter in the light of the determination of the board of directors."

We are not entirely clear what the effect of that amendment may be. If we are going to have an independent workers' compensation appeals tribunal, it is our submission that the tribunal should be truly independent. It should be completely divorced from the other operations of the board. We submit that on its face section 86n appears to be inappropriate, and when the Legislature comes to committee to consider the bill on a clause-by-clause basis, we urge that section 86n not be included.

I have mentioned the problem reflected by the letter of July 26, 1982. We urge on the committee at the bottom of page 4 and at the top of page 5 that when we are faced with this sort of request from the WCB, we should have a full right of appeal, particularly when we may have to pay some money in advance. I am not too concerned about the board's cash flow, but before it is clear we have to pay out this sum of \$62,000, we should have the right to take this request of the board, if so advised and if it seems appropriate, to the new independent workers' compensation appeals tribunal.





Again with great respect, we are not quite sure of the effect of Bill 101 on this matter. I start with section 132 of the new act, as it will be after the passage of Bill 101, which for those of you who have your pamphlet copies in front of you is at page 30 of the bill. It seems to provide in general terms, with exceptions which seem not to be material, that existing claims stand to be covered and disposed off according to the way the act stood at the time the injury occurred.

That is what section 132 says, and standing by itself it would seem to exclude the application of the Workers' Compensation Appeals Tribunal in matters of this kind. When, however, you go back to section 860 of the new act, which is set forth at pages 26 and 27, there seems to be established a limited right of appeal with respect to pre-existing decisions with leave of the appeals tribunal.

The language of the act, at the top of page 27 of the pamphlet copy of the bill, is, "With the leave of the appeals tribunal, a decision of a panel of the board made before this section comes into force may be appealed to the appeals tribunal." What we urge on the board is that all matters relating to existing claims--such as this request for extra deposit in large amount--are matters which we urge be part of the jurisdiction of the new tribunal.

When the Legislature comes to consider the bill in detail in the committee stage, we ask that the bill be amended to provide that. If the new appeals tribunal is good for new claims, it is our submission to your committee that it is equally good for old claims and that the act should so provide without any doubt or argument whatsoever.

On page 5, the second full paragraph, we say: "From time to time the board has reconsidered the cases of injured workers of schedule 2 employers who are receiving pensions. The board has from time to time been of the view that the degree of disability attributable to the accident, and hence the pension, should be increased.

"This situation represents a special hardship to Standard P and I, which has no source of reimbursement for the increased payments that may result from such action of the board. Standard P and I submits that in such circumstances the existence of an independent appeal process is particularly appropriate. As mentioned, the act should be amended to clearly so provide."

When we have a case such as this represented by the letter, the first thing we are asking is access to the Workers' Compensation Appeals Tribunal. The second thing we are asking is full access to the claims file. The accident occurred in this case--which I throw out only as an example but we think a relatively typical example, certainly in the permanent disability situation--in 1979, large deposit paid in 1975, further large deposit requested in 1982.

What we ask is that we be given full access to the claims file so that, especially after this lapse of many years--I guess



its about 13 years in this case--we can appraise the situation and decide what our course of action should be. We particularly ask that we be allowed to see the entire claims file as a matter of right so that we can decide whether there is an issue.

4:10 p.m.

It may well be that having seen the claims file we may be of the view that everything the Workers' Compensation Board is saying to us in this letter is eminently proper and the only thing to do is write a cheque. But before we are subjected to this kind of very large liability, we do urge on the committee that we should have a complete right to view the claims file. This part of our submission is set forth commencing at the bottom of page 5 and continuing at the top of page 6.

As the committee knows, under the proposed subsections 77(1) and (2) the worker is basically given an unrestricted right of access, with certain limited exceptions, to his claim file; of course, that is the way it should be. Subsection 77(3), however, does not give a similar right to employers. Subsection 77(3), which we set forth verbatim in the middle of page 6 of our submission, reads as follows:

"Where there is an issue in dispute, upon request the board shall grant the employer access to copies of only those records of the board that the board considers to be relevant to the issue or issues in dispute, and the board shall provide like access and copies to a representative of the employer upon presentation of written authorization for that purpose signed by the employer."

We submit that this is by no means as it should be. If the board is asking us for \$62,000, the least it can do, in our submission, is give us complete access to its file. Really the contest is to a large measure with the board.

The board has said, "Pay us \$62,000." If the board is the judge of what portions of the file we can see, the board really becomes both judge and prosecutor. It is certainly my understanding that one of the very real policy considerations represented by the proposed enactment of the independent Workers' Compensation Appeal Tribunal provisions is to provide independence from the board for those who are aggrieved by the board's decisions.

If you cannot get complete access to the board's file, you do not know whether you are aggrieved by the board's decision or not. The worker, as he should, gets complete access to the board's file. He can tell whether he is aggrieved or not.

We urge on the committee that the employer, and especially the schedule 2 employer who is personally liable to pay compensation, should likewise have full access to the board's file, the whole file on the matter, so he can determine whether he is aggrieved or not, and not simply the portion of the board's file that the board thinks he should see.

These points are amplified on page 6, and at the bottom of





page 6 and the top of page 7 we particularly urge that this is important to someone in the position of the Standard Steamship Owners Protection and Indemnity Association. The name of the game and the conduct of our operations require that we set up reserves so that we will know the liabilities we have to meet in the future and can keep ourselves solvent.

Let us say that consideration of the board's file disclosed the possibility that it is \$62,543 today, but another five years down the line it may be another \$60,000. It is terribly important to us to know that. We have to make reserves for these contingencies. If we are going to make reserves for these contingencies and be able to run our operations properly, we do urge on the committee that we should have full and unrestricted access to the board's claim files.

At the first full paragraph on page 7 of our submission, we raise certain objections to the provisions of subsection 77(5) of the Workers' Compensation Act as it will be enacted by Bill 101. This, of course, relates to the question of the release of medical reports and the right of the worker to object to the release of medical reports.

I think we are all very conscious of the necessity of respecting the worker's privacy and respecting the integrity of his or her intimate affairs. That is a very real policy consideration which I recognize. On the other hand, in my submission, there is the equal policy consideration of essential fairness. If we are required to pay this large sum of money, surely we should be entitled to view all medical reports.

As I say, the right of the worker to privacy is an important one, but on the two competing policy considerations, I do urge on the committee that the stronger policy consideration is the matter of essential fairness, that people called upon to pay large sums of money should know in full detail the basis on which they are being asked to pay those large sums of money. Therefore, we respectfully request that subsection 77(5) be amended to make it clear beyond doubt that employers are entitled to view all medical reports in the board's file.

We urge on the committee that the changes we ask be made in section 77 of the act are particularly appropriate because of the presumptions contained in Bill 101, subsections 3(3) and (5), which are re-enacted by section 3 of Bill 101. This material is at the bottom of page 7 and at the top of page 8 of our submission.

The act creates certain presumptions in favour of the worker. We do not quarrel with that at all. Subsection 3(3) provides that the accident is presumed to have occurred in the course of employment. In subsection 3(5), if the evidence stands equally, it is to be resolved in favour of the worker. We do not quarrel with that. What we do urge is that if, in effect, being personally liable to pay, we have to prove ourselves innocent, we should at the very least have unrestricted access to the claims files in the hands of the board, including the medical records.

The next heading of our submissions is on page 8; it deals with medical examinations. As members of the committee know,



section 21 and to some extent section 22 of the existing act give an employer the right to have an employee examined by a legally qualified medical practitioner. Sections 21 and 22 of the existing act are to be repealed by Bill 101.

What is the first reaction of the person who is likely to pay under this letter? The first reaction if you get this letter is, "May we please let our doctor have a look at Mr. X and see how he is doing before we pay this sum of \$62,000?" I urge on the board that as a matter of essential fairness, there should be a right of employers, especially employers under schedule 2 who find themselves faced with the necessity of making section 29 deposits, to have medical examinations of the claimants. They have that under section 21.

There are certain provisions, of course, in Bill 101 with respect to the medical board, but in my submission we do urge on the committee that we should have the right to have our doctor have a look at, in this case, Mr. X. I do not mean to embarrass Mr. X, who had a head injury; probably everything is on the up and up, and I do not for a moment suggest it is not, but maybe there are some who are not.

Mr. Chairman: Excuse me. You have mentioned a gentleman's name on several occasions. These are public records, as you know, and I just wonder whether Mr. X knows that this letter is before us.

4:20 p.m.

Mr. Herridge: No. I do not know. The letter from the board to us is, of course, a public letter. I would be glad to have his name deleted. The issue is not this gentleman.

Mr. Chairman: I realize that.

Mr. Herridge: The issue is the problem raised by this letter, and I would be very glad to have his name deleted from the record. Possibly I should not have mentioned it. I did it as a matter of convenience. Let us call him Mr. X. Our client would like to have a look at Mr. X before it pays its money. Under section 21 of the existing act, it may have had that right. It will not have it under Bill 101. It is our submission that it should.

At heading 5 of our submission, we comment briefly. I will not detain the committee with it. It is all set out on the policy considerations of Bill 101 which differ from the white paper and the previous report of your committee with respect to the payment of workers' compensation benefits after age 65, or after retirement, depending on whether the recommendation is that of the white paper or the recommendation of your committee. We submit that was an appropriate recommendation.

At the bottom of page 9 we refer to the previous submission on behalf of SCALA, the Standard Compensation Act Liability Association, which we commend to the careful attention of your committee. It is a more comprehensive one than ours. They are





still paying out appellant claims. We have been out of it since 1977. I hope that in the course of this brief submission we have put before you the real problems of our client, and the real problems for our client that seem to be raised by certain aspects of Bill 101.

Mr. Lupusella: On certain items I think you are going too far to the extreme on the right, but I realize you have a genuine concern about the issue that was presented to us today, in particular, the schedules 1 and 2 item, which is important. I was not aware of the deposit that the employer is requested to make when a pension is awarded. I have a simple question for Mr. Cain. What is the justification behind the deposit? Is it a matter of policy or the act? I think it is in the act requesting the deposit. Am I correct?

Mr. Cain: Sir William Meredith, when enacting the legislation, said there would be a guarantee of benefit. In order to ensure that when it comes to a pension, one must capitalize the value and make sure it is there for the injured worker for the foreseeable future.

Mr. Lupusella: Why do employers under schedule 1 of the act not fall in the same route described under schedule 2 of the act? I still do not understand whether it is a matter of interpretation of a policy or whether the act requests that.

Mr. Cain: Schedule 1 is collective liability. Therefore, the employer pays an assessment based on cost, but whenever a pension is capitalized for an injured worker employed with a schedule 1 employer, in essence that capitalized value of the pension is set aside to ensure that the worker will receive the benefit for the remainder of his life.

In the case of schedule 2 employers, we do not have any money from them. We only have enough money to continue to pay their claims based on past experience. When the injured worker's pension is capitalized, let us say at \$50,000, we have to ask the schedule 2 employer for \$50,000 to be put aside for the injured worker, because otherwise we would not have it.

Mr. Lupusella: Are you telling us that employers covered under schedule 2 do not fall under the general theme of the act in which the assessment is collected on a yearly basis?

Mr. Cain: There are two totally different methods of collecting the funds. The injured worker is not treated any differently whether he works for a schedule 1 or a schedule 2 employer, but certainly the method by which the board obtains its funds is entirely different between schedule 1 and schedule 2.

Mr. Lupusella: I think I have to repeat my question. Besides the principle enunciated--by Mr. Meredith, was it?

Mr. Cain: Sir William Meredith.

Mr. Lupusella: Besides that principle, what is the real justification of insuring the capitalized value of the pension of the injured worker?



Mr. Cain: It is two things. One, as I said, is to ensure that the worker has the money available for the remainder of that injured worker's life; and, second, I assume it is a good financial practice that one has to capitalize the pensions or whatever and have the money there. I would assume it is a financial practice.

Mr. Lupusella: Fair enough. If such a principle is implemented with employers covered under schedule 2, why is not the same principle implemented for employers covered under schedule 1?

Mr. Cain: It is, because when we capitalize the value of a pension under schedule 1, we know for the future what that pension is going to cost and, therefore, the assessments will reflect it.

What you are referring to, I assume, is that in future years if there are escalations in that pension we have not allowed for it. That is precisely the matter that was being raised in this letter of July 26, 1982. It was an escalation factor, an amendment to the Workers' Compensation Act, that increased the pension. Therefore, we asked this company for additional money for the capitalized value of that pension.

Mr. Lupusella: Let me pursue the item further. Am I correct in interpreting your statement that under schedule 1 and schedule 2 the board uses the method of capitalizing the total amount of the pension of the injured worker, in both cases?

Mr. Cain: Yes.

Mr. Lupusella: The only difference which exists is the board requires a direct deposit from the employer covered under schedule 2. In schedule 1 there is no such requirement that the employer covered under that schedule will make the direct deposit of the injured workers' pensions. Am I correct?

Mr. Cain: They do not make a direct deposit because it is collective liability, but in essence that amount of money is set aside, because the assessment is high enough to allow for the fact that it is expected that X number of pensions will be paid during a given year and they will have a capitalized value of Y number of dollars, and so the money is there to be put aside.

Mr. Sweeney: Except that it is short \$5 million.

Mr. Lupusella: Let me ask another question. It appears that not too many employers are covered under schedule 2. Am I correct? Do you have any statistical data--two per cent, 10 per cent?

Mr. Cain: I admit I should know the number and I honestly cannot remember it. It is a small number of employers, a very small number.





Mr. Lupusella: Is this the main reason why the board is collecting the deposit--that not many employers are participating in schedule 2, which means there is not too much income getting into the funds of the board?

Mr. Cain: No. The schedule 2 employers have existed since the act was originally enacted. Schedule 2 primarily covers employers who have international trade who are inside and outside Ontario, although I suppose there may be the odd one inside, such as all government. Most government is under schedule 2 as well.

It was just a special circumstance. As I said, the benefits to the injured workers are precisely the same. It is just that the method of collecting funds is a little different, or substantially different.

Mr. Lupusella: Which leaves in my mind another loophole. Employers covered under schedule 2 pay their yearly assessment, and when a pension award is granted there is a deposit, or is it just a deposit which covers their assessment as well?

4:30 p.m.

Mr. Cain: Schedule 2 employers do not pay a yearly assessment. They pay a certain sum of money into the board so that at any given time we can pay the claims they have with us. If that fund they have given us starts to go down a little bit, we will write that employer and ask for more money because we anticipate additional claims and we want to have the money to pay them. They do not pay a yearly assessment.

Mr. Lupusella: This was the main question which I was supposed to raise to clarify the whole situation.

Mr. Chairman: Does anyone have any questions for Mr. Herridge and his delegation?

Mr. Herridge: I have just one comment arising out of Mr. Lupusella's comments and that is that the schedule 2 employer does pay his pro rata share of what you might call the board's overhead expenses, the costs of administration of the board. I think they are assessed to schedule 2 employers annually.

Mr. Cain: That is quite true. Schedule 2 employers do pay their share of the administration costs over and above the money we pay out in claims.

Mr. Sweeney: I have one question. You indicate on page 3 that Standard Protection and Indemnity Association is no longer able to collect premiums. If you are continuing to pay out, how come you cannot collect? What is the relationship between you and your clients?

Mr. Herridge: The clients paid their premiums many years ago and, in return for the premium, they were covered against their liability for workers' compensation whenever it occurred. That was the deal.



Mr. Sweeney: If they are still a client of yours--maybe they are not--do they not have to pay a continuing premium as with any insurance?

Mr. Herridge: We are not now writing this business. This business is now being written by SCALA, from whom you heard earlier.

Mr. Sweeney: So somebody pays the premium to them.

Mr. Herridge: Yes. But suppose, even in the case of SCALA, you had a ship owner whose worker had an accident today and in 10 years there is a call for more deposit and that ship owner is no longer insured by SCALA. There is nothing SCALA can do to get more money. This is a question of digging into our pockets. That is the risk we run.

Mr. Sweeney: That is what I was going to say; it is a pretty risk business you run.

Mr. Herridge: It is a risky business. What we do ask is that the risk be kept to a minimum by the procedural fair play which we ask for in our submission. Sure, it is a risky business.

Mr. Sweeney: That is why you got out of it.

Mr. Herridge: May I just comment on this? It has become particularly risky with inflation. You can set aside a reserve, without too much trouble, for the benefits as they appear in the act today. There is no great problem on that.

When the Legislature, very properly, has been increasing the benefits for inflation, you are hard put to know what your reserves should be. You could perhaps start guessing, by taking inflation trends, as to what your reserves should be, knowing the board is going to come back to you.

We are not questioning that, under the act, the board was entitled to write that letter. We may not like having to put up this extra deposit, but that is the way it is.

What we do ask is that when out of the blue comes this request for more deposit, we be given the procedural safeguards for which we ask in our submission. That is, I think, all we can really ask for from your committee at this point, but we really do ask for that.

Mr. Chairman: Thank you, Mr. Herridge, for appearing before us today and expressing your views and the concerns that you and your company have. We appreciate it very much.

Mr. Laughren: That letter is a collector's item.

Mr. Herridge: Yes, but there are a lot of them around. As I do urge, Mr. Laughren, this letter is perfectly proper. The board, in doing that, is doing exactly what the statutes say it should. The only thing is we just want to be sure, before we pay





out the \$60,000, that we really have to, and that, for instance, Mr. X, as we are going to call him, still remains disabled after his accident in 1969.

Mr. Chairman: Before the committee adjourns, there seems to be a consensus of our committee that the clause-by-clause should be conducted Thursday and Friday, September 6 and 7, and then Monday to Thursday, inclusive, from September 10 to 13. Unless I hear some objection to that, that is what we will plan on.

Mr. Sweeney: What was the other one?

Mr. Chairman: September 10, 11, 12 and 13.

Mr. Sweeney: That is two days in one week and four the next, a total of six days.

Mr. Lupusella: And if there is any extra need, of course, we are going to sit longer.

Mr. Chairman: We cannot at present because we have no authority to do so.

Mr. Laughren: Let us hope not.

Mr. Chairman: Let us hope we can wrap it up in three or four days.

Mr. Lupusella: You never know.

Mr. Chairman: You never know. That is right.

Mr. Lupusella: It is a very controversial bill, and I am sure we should leave the option open to sit even after September 10 or 13.

Mr. Laughren: By the time Doug gets through with all the amendments he is going to make this summer, it may not take long to get through it.

Mr. Chairman: That is Thursday and Friday the first week, and then Monday to Thursday, inclusive, September 10 to 13.

The committee adjourned at 4:35 p.m.







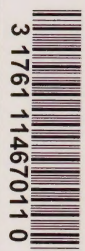












3 1761 11467011 0